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CONNECTED WITH THE

General Administration of the Law;

ARRANGED ACCORDING TO THE ORDER OF SUBJECTS:

WITH

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By Sir WILLIAM DAVID EVANS, Knt.
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[This Act at length, *infra*.]

[No. II.] Statutum Wallie.—*Claus.* 12 Edward I. *dorso. in Turr.* Lond.

EDWARD, by the grace of God King of *England*, Lord of *Ireland*, and Duke of *Aquitaine*, to all his subjects of his land of *Snowden*, and of other his lands in *Wales*, greeting in the Lord. The Divine providence, which is unerring in its own government, among other gifts of its dispensation, wherewith it hath vouchsafed to distinguish us and our realm of *England*, hath now of its favour wholly and entirely transferred under our proper dominion the land of *Wales*, with its inhabitants, heretofore subject unto us in feudal right, all obstacles whatsoever ceasing; and hath annexed and united the same unto the crown of the aforesaid realm, as a member of the same body. We, therefore, under the Divine will, being desirous that our aforesaid land of *Snowden* and our other lands in those parts, like as all those which are subject unto our power, should be governed with due order to the honour and praise of God, and of Holy Church, and the advancement of justice, 12 Edward I.

* It has been thought desirable to introduce in this Class some of the old statutes respecting Wales, as indicating the state of that country, and the nature of its connection with England, although such statutes are not immediately applicable to the present general division.

Mr. Abbot, the late Speaker of the House of Commons, published a work on the practice of the Chester circuit, (of which he was formerly a member) preceded by a very valuable preface, in which, in addition to his remarks on the particular subject, he makes some very valuable observations on the general propriety of admitting alterations in the existing law.

The Editor of this Work has published an account of the practice of the Court of Common Pleas at Lancaster, which was formerly submitted to the Prothonotary of the Court, and may be therefore regarded as authentic. To which list the Editor of this edition must add, the excellent Work of Mr. Oldnall Russell on the Practice of the Court of Great Sessions.

† At the close of the Chapter is the following enactment:—"And this is to be intended in all places where the King's writ lieth. And if that be done in the marches of Wales, or in any other place where the King's writ be not current, the King, which is sovereign Lord over all, shall do right there unto such as will complain."

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and that the people or inhabitants of those lands who have submitted themselves absolutely unto our will, and whom we have thereunto so accepted, should be protected in security within our peace under fixed laws and customs, have caused to be rehearsed before us and the nobles of our realm the laws and customs of those parts hitherto in use, which be diligently heard and fully understood, We have, by the advice of the aforesaid nobles, abolished certain of them, some thereof we have allowed, and some we have corrected; and we have likewise commanded certain others to be ordained and added thereto; and these we will shall be from henceforth for ever stedfastly kept and observed in our lands in those parts, according to the form underwritten.

We have provided and by our command ordained, That the justice of *Snowden* shall have the custody and government of the peace of us the King, in *Snowden*, and our lands of *Wales* adjoining, and shall administer justice to all persons whatsoever, according to original writs of us the King, and also the laws and customs underwritten. We likewise will and ordain that there be sheriffs, coroners, and bailiffs of commotes in *Snowden*, and our lands of those parts; a sheriff of *Anglesea*, under whom shall be the whole land of *Anglesea*, with its cantreds, metes, and bounds; a sheriff of *Caernarvon*, under whom shall be the cantred of *Arvan*, the cantred of *Arthlencoyth*, the commote of *Cruthin*, the cantred of *Thleen*, and the commote of *Yvionith*; a sheriff of *Merioneth*, under whom shall be the cantred of *Merioneth*, the commote of *Ardovey*, and the commote of *Penthlin*, and the commote of *Deyrinoin*, with their metes and bounds; a sheriff of *Flint*, under whom shall be the cantred of *Englefeud*, the land of *Maillor Sexeneyth*, and the land of *Hope*, and all the land adjoining to our castle and town of *Rothelan* unto the town of *Chester* shall from henceforth be obedient under us, to our Justice of *Chester*, and shall answer for the issues of the same commote at our Exchequer of *Chester*. There shall be coroners in the same counties to be chosen by the King's writ, the tenor whereof is to be found among the original writs of the Chancery. There shall likewise be bailiffs of commotes, who shall faithfully do and discharge their offices, and diligently attend thereto according to what shall be given them in charge by the justice and sheriffs; a sheriff of *Carmarthen*, with its cantreds and commotes, and ancient metes and bounds; a sheriff of *Cardigan* and *Llampter*, with its cantreds and commotes, and metes and bounds. There shall be coroners in these counties, and bailiffs of commotes as before.

Of the office of sheriff in Wales, and the manner of holding courts.

The sheriff ought to execute his office in this form, to wit, When any one shall have complained to him of any trespass done to him against the peace of our Lord the King, or of the taking and wrongful detaining of cattle, or of an unjust taking or of debt or any other contract not fulfilled, and the like, either by writ or without writ, first let him take pledges of prosecuting his claim or the party's oath if he be a poor man, and afterwards make execution as is more fully declared in this manner; the defendants in each case shall be summoned to be at the next county court to answer unto the plaintiffs, at which court after summons made and proof thereof, if they come not they shall be summoned again by award of the court to be at another court next ensuing to answer as before, at which if they come not after summons repeated and proof thereof, they shall be summoned by award of the court a third time to be at the next third county court to answer as before, at which court if they come not, then the plaintiffs by judgment of the court, as well in pleas by writ as plaints without writs, shall recover their demands together with damages or amends as well in moveables as in immoveables, according as the actions require; and for such defaults a penalty shall be incurred to our Lord the King, according to the law and custom of *Wales*. And when the parties shall have appeared to plead, each shall be received without fine to relate the truth of his case, and according to the plaints, answers, and allegations on either side shall be the proceeding to judgment for the plaintiff or defendant, by the award of the county court, and the punishment shall be accord-

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ing to the quality and quantity of the offence. And it is to be known that the county court ought to be holden in this manner, to wit, from month to month, in such place as our Lord the King shall ordain; and this upon *Monday* in one county, upon *Tuesday* in another, upon *Wednesday* in a third county, and upon *Thursday* in a fourth; and not upon any other days. And the sheriff shall proceed thus in the holding of his county court:—First, he shall hear and receive before himself and the coroner, and the suitors of the county, the presentments of felonies and of casualties that shall have happened between two counties, touching the death of a man in this manner; That the four townships next to the place where the fact of manslaughter or misaventure shall have happened, shall come to the next county court, together with him that found the dead man, and the Welchery, that is the kindred of the person slain, and there shall present the fact of felony, the case of misaventure, and the manner of either; declaring thus, That on such a day, at such a place, it fell out that such an one, known or unknown, was found slain feloniously, or drowned, or otherwise dead by misadventure, and such an one found him who is present, &c. and that presentment shall be forthwith inrolled, as well in the coroner's roll as in the sheriff's. And if there should be present man or woman that would sue by appeal, there shall be pledges to prosecute taken forthwith, and the appeal shall be sued in that county court. So that if the appellees should appear they shall straight be taken and detained in the prison of our Lord the King until the coming of the justice, and be safely kept. And if they should not appear, then upon the prosecution of the appellor they shall be exacted from one county court to another; and if they come not at the fourth court, or be not taken to pledge, they shall be outlawed, and women shall be waived. And if they should not appear at the first county court where they shall be exacted, their lands and chattels shall be forthwith taken and seised in the hand of our Lord the King, and shall be delivered into ward to the townships as hereunder. In the same manner shall the proceeding be in an appeal of wounding, maihem, rape, arson, and robbery against the appellees, if they should not appear. And if they should appear and find sufficient pledges, six at the least, or more, to abide judgment at the coming of the justice, they shall straight be replevied. And it is to be known that the proceeding to outlawry is not to have place against appellees of force, command, direction, or receit, until some one be convicted of the fact.

The sheriff shall make his turn in his several commotes twice in the year in some place certain to be therefore assigned; that is to say, once after the Feast of St. *Michael*, and once after *Easter*; at which turn all freeholders and others holding lands, and dwelling in that commote at the time of the summons for holding of the term, except men of religion, clerks, and women, ought to come thither. And the sheriff by the oath of twelve freeholders of the most discreet and lawful, or more, at his discretion, shall diligently make enquiry upon the articles touching the crown and dignity of our Lord the King hereunder written.

Of traitors to our Lord the King and the realm, the Queen and their children, and their abettors; of thieves, manslayers, robbers, murderers, burners, that make felonious burnings, and their receivers and accessaries; of mascherers, that sell and buy stolen meat knowingly; of whittawers, that is, those that whiten hides of oxen and horses, knowing the same to have been stolen, that they may not be known again; of redubbers of stolen cloths, that turn them into a new shape and change the old one, as making a coat or surcoat of a cloak, and the like; of outlaws and abjurors of the realm that have returned to it; of such as have withdrawn themselves against the coming and eyre of the justice, and have returned after the eyre; of ravishers of maids, nuns, and matrons of good repute; of treasure trove; of turning watercourses; of hindrance, restraint, and narrowing of the highway; of walls, houses, gates, ditches, and marl-pits raised and made near unto the public way, to the nuisance of the same way and to the danger of passengers, and of them that raise and make the same; of forgers of

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the money and seal of our Lord the King; of trespassers in parks and vivaries; of breakers of the prison of our Lord the King; of takers of pigeons flying from dovecotes; of those who make pound-breach, that is, breakers of the inclosures wherein beasts are impounded; of forestall, that is, of the stopping of cattle; of hamsoken, that is, of breaking into houses; of theftbote, that is, of taking amends for theft without leave of the King's court; of them that do imprison any freemen whatsoever; of usurers; of removers and falsifiers of land-marks; of non-observance of the assize of bread and beer, and of breakers thereof; of unlawful bushels, gallons, and other measures; of unlawful yards and weights, and them that sell therewith; of them that give lodging to persons unknown for more than two nights; of blood spilt; of hue and cry levied; of them that shear sheep by night in the folds, and that flay them or any other beasts; of them that take and collect by night the ears of corn in autumn, and carry them away; and of all other the like trespasses. Let inquiry also be made of the rights of our Lord the King withdrawn, as of custodies, wardships, marriages, reliefs, fees, advowsons of churches if any there be; suits to the county and commotes, who shall have withdrawn them, and from what time; and of them that shall have taken upon them to exercise royalties without warrant, as gallows-fines for breach of the assize of bread and beer, plea of *vetitum namium*, and other the like rights, which specially and by prerogative belong to the crown of our Lord the King. The sheriff in making his view and turn shall first cause to come together forthwith before him all the men of the whole commote, and shall cause them to swear that they will true presentment make to the twelve or more of the jury chosen by the sheriff; and that they will conceal nought that is true nor say ought that is false of those things that shall be given them in charge in behalf of our Lord the King; and the oath being taken, the above-written articles shall be laid before them, and they shall be charged to make diligent enquiry upon each; and if they should find any who for their offence ought to lose life or limb, they shall intimate their names to the sheriff secretly, lest the men so indicted should escape if they were present in the turn, and were indicted publicly; but of the rest of the articles they may well declare their answers openly and in public, and return their verdict; and then it shall be told them to go apart by themselves and diligently to treat and enquire of those things that are given them in charge. And when they shall have been well informed, they shall return, and render their verdict, and make their presentment. But the sheriff in receiving the verdicts and recognitions shall not seek to trouble them that make presentments, nor shall he take fines of them for not being troubled. And when the verdict or presentment of the jury is brought in, the sheriff shall forthwith, or as soon as he may, take and keep in prison or discharge upon sufficient bail, such as have been indicted of offences whereof the punishment is death or loss of limb. And of the rest of the articles there shall forthwith be correction and due execution made in all and every the matters aforesaid, according to the inquisitions. And the bailiffs of commotes shall from henceforth hold their commotes, and do and administer justice to the parties in suit.

Of the office of coroner, that is to say, of the pleas of the Crown in Wales.

It is provided, That in every commote in *Wales* there shall be one coroner at the least who shall be chosen in the full county court by the writ of our Lord the King, according to the form among other royal writs in the following roll contained; and he shall there make oath before the sheriff that he will be faithful to our Lord the King, and that he will faithfully do and execute all things belonging to the office of coroner. And his office shall be this,—That when he shall be required by any one to come and view a man dead by felony, or drowned, or in any other manner dead by misadventure; and also to view a man grievously wounded, so that his life be despaired of, that he shall forthwith require the sheriff or bailiff of the commote to cause to come before him at a certain day and place all persons of twelve years of age and upwards of that town wherein the casualty shall have happened,

and of the four townships next adjoining; and by their oaths he shall faithfully, cautiously, and secretly and diligently make enquiry of the felony, the felons, and their chattels; likewise of the fact and the manner thereof, that is to say, who hath been guilty of the fact, who of force, and what manner of force, who of command or direction, and who of receipt after the fact; and of the chattels of all those who shall be found guilty thereof by the inquest. He shall likewise make enquiry who first found the body, and his name shall be inrolled, and he shall be attached by pledges whose names shall be inrolled, to come to the next county court, and also before the justice in his circuit. And the inquisition being made, he shall forthwith cause the same to be inrolled distinctly and openly, together with the names of those who shall have been found guilty, and their chattels; and he shall secretly deliver to the sheriff, if he be present, or to the bailiff of the commote, their names in writing; giving in charge on the behalf of our Lord the King, that straight their bodies be taken and safely kept in the prison of our Lord the King until they stand upon their acquittal in the court of our Lord the King; and he shall cause their chattels to be faithfully appraised, and shall set down in his roll as well the particular chattels as the value thereof; and shall cause the said chattels by the view of the sheriff or bailiff, and of the other liege subjects of our Lord the King, who shall be there present, to be delivered to every of the townships wherein the said chattels shall severally be found; that they may duly answer for the same upon the coming of the justice of our Lord the King. The coroner when he shall make inquisition concerning the dead shall enquire of the Welshery, that is to say, the kindred of the dead man; and if any one on the part of the father, and another on the part of the mother, shall appear, and say that they are of his kindred, and the same be testified by liege subjects of the King, he shall straight cause their names to be inrolled in this roll. But if none of the kindred should appear, it shall likewise be inrolled in his roll that none doth appear; that the justice at his coming may the more clearly proceed in what is fit to be done thereupon. The coroner also shall diligently make enquiry of the happening of the accident and the manner thereof; and according to what he shall find upon the inquest shall cause the same to be distinctly inrolled. He shall likewise inquire who found the body, and cause his name to be inrolled as above.

Moreover when a thief or manslayer or other malefactor shall fly to the church, the coroner, as soon as he shall be certified thereof, shall direct the bailiff of our Lord the King for that commote to cause to come before him at a certain day the good and lawful men of the neighbourhood; and in their presence, after recognition made of the felony, shall cause the abjuration to be made in this manner; That the felon shall be brought out unto the church-door, and a sea-port shall be assigned him by the coroner, and then he shall abjure the realm, and according as the port assigned shall be far or near, the term shall be set for his going out of the realm aforesaid: so that in journeying towards that port, bearing in his hand a cross, he shall not in any manner turn out of the King's highway, that is to say, neither upon the right hand nor upon the left, but shall always hold to the same until he shall depart the realm.

The writ of Novel Disseisin for a freehold whereof any freeholder shall have been disseised unjustly, and without judgment.

The forms of the King's original writs to be pleaded in Wales.

'The King to the Sheriff of *Anglesey*, greeting, A. hath complained 'unto us that B. and C. unjustly and without judgment have disseised 'him of his freehold in M. after the proclamation of our peace in '*Wales*, in the eleventh year of our reign. And therefore we com- 'mand you that if the aforesaid A. shall give you security to prosecute 'his claim, then you shall cause the said tenement to be reseised of the 'chattels that shall have been taken in the same; and the same tene- 'ment with the chattels to be in peace until a certain day, whereof our 'justice shall give you notice. And in the mean time cause twelve free

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'and lawful men of that neighbourhood to view that tenement, and 'their names to be put in writing, and summon them by good sum-'moners that they be then before our justice aforesaid, ready to make 'recognition thereof; and put by gage and safe pledges the aforesaid 'B. and C., or their bailiffs if they be not found, that they be then there 'to hear that recognition; and have there the summoners, the names 'of the pledges, and this writ, dated at *Carnarvon*, such a day and 'year.' [*or elsewhere.*]

For Novel Disseisin of common of pasture.

'A. hath complained unto us that B. and C. unjustly, &c. have dis-'seised him of his common of pasture in N., that is appurtenant to his 'freehold in the same town; or in another if so be the case, after our 'peace, &c. And therefore we command you that if the aforesaid A. 'shall give you security, &c. then you shall cause twelve free, &c. to 'view that pasture and the tenement, and their names to be put in writ-'ing; and summon them by good summoners to come before the 'aforesaid justice, &c. ready to make recognition thereof; and put by 'gage and safe pledges the aforesaid B. and C. or their bailiffs, if they 'be not found, that they be then there to hear that recognition. And 'have there, &c. dated, &c.' Or thus:—'A. hath complained unto us 'that B. unjustly, &c. hath raised or pulled down a certain hedge or a 'certain fence, or hath obstructed or narrowed a certain way, or hath 'turned aside the course of a certain water, or hath made or pulled 'down, or made higher a certain pond in N. to the nuisance of his 'freehold in the same town; (or in another if so be the case,) after our 'peace, &c. And therefore we command you that if the aforesaid A. 'shall give you security, &c. then you shall cause twelve, &c. to view 'that hedge or that fence, or that way or watercourse, or that pond 'and the tenement, and their names to be put in writing. And sum-'mon them, &c. to come before our justice, &c. ready, &c. and put 'by gage, &c. the aforesaid B. or his bailiff, &c. that he be then, &c. 'and have, &c. dated, &c.' And the forms of the writs shall be changed according to the diversities of the cases.

Writs of mort-dauncester.

'The King to the sheriff greeting. If A. shall give you security to 'prosecute his claim, then summon by good summoners twelve free and 'lawful men of the neighbourhood of N. to come before our justice, 'ready upon their oath to make recognition whether B. the father of the 'aforesaid was seised in his demesne as of fee of such a manor with the 'appurtenances, or of so much land with the appurtenances, in N. on the 'day when he died; and whether he died since the proclamation of 'our peace in *Wales* in the eleventh year of our reign. And whether 'the same A. be his next heir. And in the mean time let them view that 'manor or that land, and cause their names to be put in writing, and 'summon by good summoners C. who now holdeth that manor or that 'land and he be then there to hear that recognition. And have there the 'summoners, and this writ, dated, &c.'

And letters patent shall be made in these words until our Lord the King shall ordain otherwise: 'The King to his justice greeting, Know ye, 'that we have constituted you our justice, together with those whom ye 'shall think fit to be associated unto you to take the assizes of *novel* '*disseisin* and *mortdauncester* in the part of *Wales*. And therefore we 'command you that at certain days and places, which you shall therefore 'provide, you do take those assizes; doing therein what appertaineth to 'justice according to the law and custom of our realm. Saving unto us the 'amercements and other things therefore due unto us: For we have given 'command to our sheriffs that they do cause those assizes to come before 'you at certain days and places which you shall for the same make 'known unto them. In witness whereof we have caused these our letters 'patent to be made unto you. Dated, &c.' And there shall be a writ close by the command of the justice to be directed to the sheriffs in this form: 'The King to the sheriff, greeting. We command you that

'you cause to come before our justice at certain days and places which 'he shall make known unto you, all the assizes of *novel disseisin* and '*mortdauncester* arraigned before the same justice by our writs, to-'gether with the original writs, attachments, and all other proceedings, 'concerning the said assizes; and the writ, dated, &c.'

And the form of the writ shall be changed according to the diversities of the cases; that is to wit, if the mother, or the brother, or the sister, or the uncle, or the aunt, were seised in demesne as of fee of the thing demanded by process of *mortdauncester* on the day when they died. And when many co-heirs and parceners of any inheritance demand that inheritance, that is to say, when one of them demandeth on the death of father or mother, brother or sister, uncle or aunt, and another or others of those co-heirs demand on the death of a grandfather, or grandmother, or cousin, male or female, a writ of *mortdauncester* shall be made to them upon their case, because that part of the said writ that toucheth the kind of ancestor who is dead, according to the clause thereof commonly used, draweth unto it the nature of other articles touching co-heirs in remoter degrees.

The general writ; which in one case concerneth the right, and in another the possession.

'The King to the sheriff greeting. Command A. that justly and without delay he render to B. the manor of N. with the appurtenances 'whereof the aforesaid A. deforceth him as he saith; and unless he shall 'do, and if the aforesaid B. shall give you security to prosecute his 'claim, then summon by good summoners the aforesaid A. that he be 'before our justice to shew wherefore he hath not done it. And have 'there the summoners, and this writ, dated, &c.' Or thus:—'Command A. 'that justly, &c. he render so much land with the appurtenances in N.' *as before.* And in like manner that writ shall be granted before the justices in the bench if the demandant chooseth.

The writ of dower in Wales.

'The King to the sheriff greeting. Command A. that justly and without delay he render to B. who was the wife of C. her reasonable dower 'that to her belongeth, of the freehold that was the aforesaid C.'s, 'late her husband, in N., whereof she hath nothing as she saith, and 'whereof she complaineth that the aforesaid A. deforceth her; and unless he shall so do, and if the aforesaid B. shall give you security to prosecute her claim, then summon by good summoners the aforesaid 'A. that he be before our justice, &c. to shew, &c. and have there the 'summoners and this writ dated, &c. And the form of the writ shall 'be changed according to the diversity of the cases; to wit, if the woman should have been endowed at the church door by the consent 'and will of the father, or other ancestor whose heir he may be or 'ought to be.'

The writ of debt.

'The King to the sheriff greeting. Command A. that justly and without delay he render B. one hundred shillings which he oweth to 'him and unjustly detaineth as he saith; and unless he shall so do, 'and if the aforesaid B. shall give you security to prosecute his claim, 'then summon by good summoners the aforesaid A. that he be before 'our justice to shew wherefore he hath not done it. And have there 'the summoners and this writ, dated, &c.' And if chattels or sacks of wool should be demanded, the writ shall be as underwritten. 'The 'King to the sheriff greeting. Command A. that justly and without 'delay he render to B. one sack of wool of the value of ten marks, 'which he unjustly withholdeth from him as he saith. And unless he 'shall so do, &c.' *as before.* And the form of like writs shall be made according to the plaintiff's shewing, and to the diversities of the cases. And such writ of debts to be pleaded before the justice shall not be made of a less sum than forty shillings. But pleas of debt that amount not to the sum of forty shillings shall be pleaded in the county court, and likewise in the commote. And if it happen that the plaintiff should choose to plead of such in the county court, then let there be made to him this writ which is called *justicies*:

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'We command you that you hold to justice A. that justly and without delay he render to B. one hundred shillings which he oweth to him as he saith, as he may reasonably prove that he ought to render the same; so that we may hear no more complaint thereof for failure of justice. Dated, &c.' Or thus:—'That he render to him a sack of wool of the value of ten marks which he unjustly withholdeth, or chattels to the value of ten marks which he unjustly withholdeth from him, as he saith, as he may reasonably prove. So that, &c. Dated, &c.' And a *pone* shall be thereupon made if demanded, in this form: 'The King to the sheriff greeting. Put at the request of the plaintiff before our justice, &c. at such a day the plaint that is in your county court by our writ between A. and B. of a debt of one hundred shillings which the same A. demandeth of the aforesaid B. And summon by good summoners the aforesaid B. that he be then there to answer thereof to the aforesaid A. and have there the summoners and this writ, and the other writ. Dated, &c.'

The writ of covenant.

'The King to the sheriff greeting. Command A. that justly and without delay he keep with B. the covenant made between them of one messuage, ten acres of land, and five acres of wood land, with the appurtenances, in N. And unless he shall do so, &c. then summon the aforesaid A. that he be, &c. to shew, &c. Dated, &c.' And let writs of covenant be made according to the complaints of the contracting parties, and the diversities of the cases, whether before the justice or in the county court, at the will of the plaintiffs. And if they choose to plead in the county court, let them have the writ called *justicies*; and thereafter a *pone* shall be made if it be demanded.

The form of the writ of attorney.

'The King to the sheriff greeting. Know ye that A. hath before us made his attornies B. and C. to win or lose in the plaint that is before you by our writ between the said A. demandant and D. tenant of one messuage with the appurtenances in N.; and therefore we command you that you do for this purpose receive the aforesaid B. and C. or either of them, if both cannot be present, in the place of him the said A. Dated, &c.' And in the same manner shall writs of attorney be made in other cases according to the diversities of the cases and the forms of the writs.

The form of the writ for choosing a coroner.

'The King to the sheriff greeting. We command you that in your full county court, and by the assent of the same county, you cause a coroner to be chosen; who having taken the oath as the custom is, shall thereafter do and observe those things that belong to the office of coroner in the aforesaid county; and that you cause to be chosen one who hath best knowledge and ability to execute that office; and that you make known unto us his name. Dated, &c.' And if he should be sick, or should die, or for any other cause be unable to execute his office, then let another writ be made changing what ought to be changed.

Of pleas, some are to be determined by the assize, some by juries.

When one who is seised of a freehold, being afterwards disseised by force, demandeth seisin to be restored to him, in this case there is provided the writ of *novel disseisin* in the form above written, among the other original writs of the Chancery. In like manner for common of pasture when one being disseised of his common of pasture appurtenant unto his freehold, demandeth seisin to be restored to him; for this case also there is provided the same writ of *novel disseisin* by the changing of certain words in the form above written, among the other original writs of the Chancery; wherein the proceeding is to be thus: First, the sheriff having taken from the plaintiff two pledges to prosecute, shall cause to be chosen twelve free and lawful men, &c. of the neighbourhood where the tenement or pasture lieth, and shall cause them to view the tenement, and in like manner the pasture, and shall attach the disseisors as it is contained in the writ. Afterwards, when the par-

ties and the assize shall come before the justice, the plaintiff shall be asked of what freehold, or of what common of pasture, he complaineth that he is disseised; and according to his complaint, and the answer of the adverse party, they shall proceed to the taking of the assize unless the disseisor can say any thing wherefore the assize ought to tarry. And if the assize do pass for the plaintiff, he shall recover his seisin together with the damages taxed by the assize against the disseisor; and the disseisor shall abide in mercy of our Lord the King, or shall be committed to prison to be ransomed, if the disseisin were done outrageously and with an armed force.

There are certain other writs which are to be determined by the assize, to wit, of a pond made, pulled down, or raised higher; of a fence raised or pulled down; of a hedge raised or pulled down; of a way obstructed or narrowed; of a water-course turned aside; and according to the diversity of the cases the original writ shall be changed: which writs are contained above with the writs of *novel disseisin*, and the proceeding therein is after the same manner as is above said in the writ of freehold, and of common of pasture. In the above said writs of assize of *novel disseisin* no essoign or delay lieth; but the proceeding to do justice beginneth on the first day.

There is another writ of assizes: When any one demandeth seisin of a tenement whereof his ancestor died seised: that is to say, the father, brother, uncle, and grandfather; for which case there is provided the writ of *mortdauncester*, in the form contained in the aforesaid roll among the other writs. And it sometimes happeneth that seisin of an ancestor is demanded where the ancestor hath not died seised, but was seised on the day when he entered into religion, or began a pilgrimage in which journey he died, and then in place of the clause on the day whereon he died, shall be put "on the day whereon he entered into "religion or began his pilgrimage, &c. in which pilgrimage, &c. and "if, &c."

In this writ of *mortdauncestor* the proceeding shall be after this manner: First pledges to prosecute being found, and the assize elected, and view made by the jurors, the tenant shall be summoned by two good and lawful summoners, that he be before the justice at a certain day; and the summons shall contain warning of fifteen days at the least; at which day if he come, the justice shall proceed in the execution of his office. And if he come not at that day he shall be punished for his default according to the provision of the Welsh law, that is to say, by three cows or the value thereof; and he shall be summoned again by two other summoners, by a summons containing the like warning of fifteen days as before is said; at which day whether he come or not the justice shall proceed to do his office, unless he shall cause himself to be essoigned for being beyond sea, and then there shall be given him the space of forty days so that he have ebb and flood: but let him that shall so essoign himself beware; for if being within the four seas, he falsely essoign himself for being beyond sea, and be thereof convict by good proof or by good inquest, he shall be punished as for a default at the first by amerciament, according to what is contained in the Welsh law; and also he shall be estopped from saying any thing against the assize, unless he can vouch to warranty. And be it known that neither in the writ of *mortdauncester*, nor in any writ of a plea of land, doth any essoign lie, except only the essoign of being beyond sea, and this before the tenant or deforciant appeareth in court; and the essoign of being in the King's service which lieth in every stage of the plea, when the King shall be pleased to warrant the same; but let him beware that he doth not falsely cause himself to be essoigned of the King's service; for if he should fail of the King's warranty he shall be punished for his default by amercement to be made to our Lord the King according to the Welsh law, and by paying to the adverse party his expenses of that day, according to the justice's discretion. In these writs of *mortdauncester* the proceeding shall be after this manner: First, the writ being read wherein is contained the claim of the demandant, the deforciant shall be asked if

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he can say ought wherefore the assize ought to tarry, which if he cannot, the justice shall take the assize by the jurors, who may best know the truth according to the form of the writ. And if the assize pass for the demandant, seisin shall be adjudged to the demandant with damages taxed by the jurors, and the deforciant shall abide in the King's mercy. But the deforciant may allege many things against the assize; for he may vouch to warranty, and then the arrival of the warrantor is to be waited for, whom the justice shall cause to come by one summons at the first, and if it be necessary by resummons as hath been said in the case of the principal deforciant; and he shall be punished for a default as is aforesaid: if after resummons he come not, nor shall essoign himself, the assize shall proceed against him by default. And if the assize pass for the demandant seisin of the thing in question shall be adjudged to the demandant, and the deforciant shall have to the value of the land of the warrantor. But if the warrantor come and require to have that shewn him, whereby he ought to warrant, it behoveth the voucher to shew the deed that maketh mention of the warranty, or of a gift made by the warrantor or his ancestor whose heir he is, wherein it is declared that he ought to hold of the feoffor and his heirs; or to shew that the warrantor was seised of his homage for the tenement demanded; which is to be enquired of if it should be denied by those before whom he shall say he did the homage together with other free and lawful men sworn; or that he holdeth that tenement in exchange for another tenement: if hereupon the deforciant can bring his warrantor to warrant, he shall abide in the King's mercy, because he hath denied the warranty; yet nevertheless it shall be considered that he may warrant and make answer to the assize if he choose.

The deforciant may allege many other things against the assize; to wit, that the ancestor, of whose death, &c. committed felony for which he was hanged, outlawed, or as a public thief escaping, and not obedient to the law beheaded, or that he abjured *Wales* upon confession of the felony before the coroner. The deforciant may also object bastardy to the demandant, and thereupon the bishop of the place shall be directed to make enquiry of the truth of the fact; and thereof to certify the Chief Justice of *Wales*. And according to what the bishop shall have certified, they shall proceed to judgment without taking the assize. And if the bishop return that he is a bastard, he shall be estopped from making the demand; and if return that he is legitimate the justice shall cause the deforciant to come by summons, and if it be necessary by resummons, reserving to the King as hath been often said the amercement for default. After the resummons whether he come or not, the demandant shall recover his demand by the bishop's testimony, whose testimony shall not be gainsayed; and he shall remain in the King's mercy. Many other things he may allege which it is hard to enumerate, as that the ancestor on whose death the assize is arraigned was a villain, and held the land in villenage, or that he held it at will or for term of life or years. In which cases the assize of *mortdauncester* lieth not, and the abovesaid assizes of *novel dissesin* and *mortdauncester* ought not to be taken but in their proper counties, lest the country should be overcharged with trouble and expense, but the assizes shall be taken by the justice twice, thrice, or four times in the year.

It hath been treated in part of writs and assizes, and of the proceeding therein. It behoveth now to speak of pleas that are to be determined by inquests or by juries; whereof some are of things immoveable, as of tenements; or of moveables, as of debts and chattels; some of both kinds; some of trespasses. But, first, something is to be said of tenements and immoveable things, for which there is a writ provided, the term whereof is contained among the other writs of those parts: the process upon that writ is such: First, there being found pledges to prosecute, the sheriff shall cause the tenant to be summoned by good summoners, that he appear at a certain day, at which day if he come not he shall be summoned again for another day, and if he come not at the second day he shall be summoned to appear at a third day, at which day if he come not nor

cause himself to be essoigned, seisin shall be awarded to the demandant by default, and the deforciant shall abide in the King's mercy, reserving nevertheless unto the King the amercement for every default as hath been said before.

Now when the deforciant shall appear by reason that the plaintiff's demand cannot be known from the words of the writ, for that the causes of suing are many and almost infinite, it is necessary that the demandant should count against the deforciant and express the cause of his demand, and this by words that contain the truth without exception to words; not following that hard rule, He who fails in a syllable fails in the whole cause,

Of the causes of suit what they may be and ought to be it is fit that something should be briefly said. Oftentimes the demandant hath right by this that his ancestor held the land in demand, and was thereof seised as of right and fee; and then the demandant must count of the descent of kin descending to himself. It happeneth also that a man demiseth land for term of life or years, after which term the land ought to revert to himself or his heirs, or likewise that it ought to revert to him after the death of a woman tenant in dower, or as an escheat after the death of his tenant being a bastard, because such an one cannot have other heir than one lawfully begotten of his own body; or after the death of his tenant who hath committed felony in any of the afore cases aforesaid, or where after the death of any one the land ought to remain unto another by the form of the gift in these cases, and the like, the demandant shall declare his demand according to his case, and in these cases and the like wherein the aforesaid writ is to be used, that and none other shall be used; and the demandant's count being heard, the tenant shall have a view of the land if he require it, and a day shall be given within which the view shall be had, and at the day given after the view the deforciant shall make answer who may vouch to warranty by the aid of the court, as it hath been said in the writ of *mortdauncester*, and the justice shall cause the warrantor to come as he caused the principal by one summons, and if it be necessary, by a second and a third, at which if he come not, he being punished upon every default as is aforesaid, seisin of the thing in question shall be awarded to the demandant for the default of the warrantor, and the deforciant shall have to the value of the land of the warrantor, and the warrantor shall be in mercy. If the warrantor come and freely warrant, he shall be received to answer and defend the plea without having a view of the land. But if he shall deny the warranty, the plea of the warranty shall be carried on between them after the manner above directed in the writ of *mortdauncester*; but if the deforciant except against the demandant that his ancestor whose seisin he demandeth or any one in the descent were a bastard, so that nothing can descend from him or through him, he shall be heard, or he may shew a deed of feoffment of his ancestor, or of quit claim of any one in the descent; and upon the affirmation of the one party and the denial of the other, the parties shall descend to the lawful inquest, and by the verdict of the inquest shall the plea be determined, because pleas of land in those parts are not to be determined by battle, nor by the grand assize. So if he should accept that the ancestor or any one in the descent committed felony whereby the action lieth not for him, in which case, if he to whom this is opposed denieth it, the matter ought rather to be determined by the record of the justice, or of the inquest of the country of the hanging and beheading; and also by the record of the coroner of the outlawry and abjuration: in like manner on the demand of a tenement that ought to revert after a term past, or by the condition of the gift upon the affirmation of the one party and the denial of the other, they shall descend to the inquest of the country, and according to their verdict shall the judgment be.

Concerning the other article, to wit, of moveables, debts, and chattels, it remaineth to speak; for which there is provided the writ of debt in the form above written. In this writ, the proceeding shall be after this manner; First, there being found pledges to prosecute the debtor, and

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defendant shall be summoned to be before the justice at a certain day, at which, if he come not, he shall be summoned again, and if at the second day he come not, nor essoign himself, the debt shall be adjudged to the plaintiff by default, together with damages at the discretion of the justice, or by the inquest of the country at the will of the justice; and the debtor shall abide in the King's mercy, reserving always to the King the amercement for every default. But if the debtor appear, the plaintiff must then declare his demand, and the cause of his demand; that is to say, that he is indebted unto him in an hundred marks, which he lent him, the day of payment whereof is past; or for land, or an horse, or for other goods or chattels whatsoever sold to him; or for the arrears of a rent not growing out of tenements, or upon other contracts whereupon he must produce his suit, or shew the deed of obligation, or tally the demand, being heard and understood, and also the declaration of the plaintiff, the debtor shall answer thereto; and if he acknowledge the debt, judgment shall be given against him, and it shall be levied of his goods and chattels, &c. if he deny the debt, and his bond be brought forth against him, the writing must be verified by the witnesses named in the bond, if they be living, together with the jury; and if there be no witnesses named, or if they should be dead, it shall be verified by the jury only, and according to their verdict shall judgment be awarded. But if the plaintiff have not a bond, but produce his suit only, or a tally, the adverse party may deny that he is indebted to him in any thing, and make his defence by wager of law, that is, by his own oath and eleven others swearing with him, or by the country at his election. It happeneth sometimes that the debtor confesseth that he did once owe the debt, and allegeth payment thereof; in this case he must shew an acquittance of the payment, or else the plaintiff may deny by wager of law that he hath received ought, or likewise by the country, &c. This writ of debt shall not be granted for a less sum than forty shillings; for of a less debt the plea shall be in the county court either with writ or without.

Concerning the third article, in which there is provided the writ of covenant, whereby sometimes moveables are demanded, and sometimes immoveables by force of a covenant entered into between the parties which may differ from the law in the form described in the place before named. The proceeding upon this writ is thus: First, there being found pledges to prosecute, the defendant shall be summoned once, and if it be necessary a second time, and if he come not upon the second summons nor essoign himself, the demand and declaration of the plaintiff shall be heard, and the thing demanded shall be taken into the King's hand if it be a tenement, and if it be a chattel, that or its value shall be taken into the King's hand, and another day shall be given him. And if within fifteen days he shall replevy the thing so taken into the King's hand, and appear at the day given him, he shall be received to answer and defend; but if not, the plaintiff's demand shall be awarded to him by default, together with damages taxed as is said before in the writ of debt. And he shall remain in the King's mercy, saving always to the King the amercement for the default as aforesaid. The plaintiff's complaint being heard, and the declaration of his demand, the defendant shall make answer; and upon the affirmation of the one party, and the denial of the other, they shall proceed to the inquest, and the business shall be determined by the inquest of the country. And it is to be known that sometimes a freehold is demanded by the writ of covenant; as where any man letteth land to another to farm, rendering therefore a certain rent under a condition added thereto in the writing of covenant, that if he be not satisfied for the rent it shall be lawful for him to enter into the land that he hath demised, and to hold the same: if he to whom the land hath been demised do not pay the rent, and he who hath demised it hath not the means of entering into the land demised according to the tenor of his writing by reason of the power of his adversary, in this case he ought to recover the tenement by the writ of covenant, together with damages. Where sometimes a covenant is made

between parties, that the one shall infeoff the other of a certain tenement, and shall deliver seisin unto him at a certain day; if afterwards he should transfer that tenement by feoffment to a third person, since he cannot annul that feoffment by virtue of the first contract that was not carried into effect, in that case the injured party cannot have other redress by writ of covenant but this only that he have a satisfaction in money for his damages; and thus in one case there lieth an action to demand a tenement by writ of covenant, and in another case money or damages, or the tenement. And for that contracts in covenants are infinite, it would be difficult to make mention of each in particular: but, according to the nature of each covenant by the affirmation of the one party and the denial of the other, it will either come to be tried by inquest upon the fact, or it will come to an acknowledgment of the writings brought into judgment, and according to that acknowledgment judgment will be awarded; or the writings will be denied, and then it will come to an inquiry into the making of the writings by the witnesses named in the writings if there be such, together with the jury: And if there should be no witnesses named, or they should be dead, then by the jury only.

Concerning the fourth article, to wit, personal trespasses; whereof it is provided, that all trespasses wherein the damages do not exceed forty shillings shall be pleaded before the sheriff in the county court without writ by gages and pledges: trespasses that exceed the sum of forty shillings shall be pleaded before the justice of Wales after this manner: The plaintiff, before he be heard by the justice, shall swear that his demand exceedeth the sum of forty shillings, and this being done, and pledges to prosecute found, the justice shall command the sheriff or bailiff of the place that he cause to come before him within a short term him of whom complaint is made; and the plaintiff's complaint being heard, the defendant shall make his answer: And since in a plea of trespass the defendant can hardly do otherwise than make his defence by the country, the justice by consent of parties shall make inquiry of the truth by lawful inquest; and that inquiry made, if he find the defendant guilty, he shall punish him by imprisonment, or by ransom, or by amercement and payment of damages to the injured party according to the quality and quantity of the offence; so that this punishment be for example to others, and make them fear to offend: And whereas mention is made above of the consent of parties, it may happen that the defendant will refuse the trial by the country; in which case if the plaintiff offer to verify the trespass done unto him by the country, and the defendant refuse the same, he shall be taken for convict, and shall be punished as though he were convict by the country.

And whereas heretofore women have not been endowed in Wales, the King granteth that they shall be endowed. The dower of a woman is two-fold: one is an assignment of the third part of the whole land that belongeth to her husband which were his during coverture, whereof there lieth the writ of reasonable dower elsewhere described in its place, with the other writ for Wales. The proceeding in this writ is thus: There being found pledges to prosecute, the deforciant shall be summoned to appear at a certain day, at which, if he come not, he shall be summoned again; at which day, if he come not, the woman shall have her dower awarded unto her; that is to say, the third part, &c., together with damages, &c.; but if the defendant appear, he shall be received to answer without having a view of the land, and the woman's demand being made, the tenant shall be directed to answer if he can allege any thing wherefore she ought not to have her dower; and if he can allege nothing the woman shall recover as above. If he should object that she ought not to have her dower because she was never espoused in lawful matrimony to him whom she calleth her husband, then the bishop shall be charged to make inquiry of the truth thereof; and that inquiry made, he shall certify it to the justice of *Wales*. And according to the bishop's certificate shall the proceeding to judgment be after this manner: If the bishop certify that she was not the lawful wife, she shall be foreclosed of

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her action of dower; if he certify that she was the lawful wife, the tenant shall be summoned to appear at a certain day to hear his judgment, at which day if he come not he shall be summoned unto another day; at which day whether he come or not there being no essoign allowed the woman shall recover her dower and damages, and the tenant in mercy. Saving always to the King the amercement for default. But if he object that she ought not to have her dower because her husband did not hold the tenement whereof she demandeth dower, either on the day when he married her or at any time after in fee, so that he could thereof have endowed her; the truth of this fact is to be inquired of by the country only, and according to their verdict shall the judgment be awarded. If it be objected unto her that she ought not to have her dower because her husband committed felony, then, if the felony be proved, she shall not recover dower. So if it be objected unto her that her husband lost the land whereof she demandeth dower by judgment as that whereunto he had not right, if this be denied and be proved by the record of the justices before whom that land was lost, or by the country, if it were lost in the country or inferior court, she shall be precluded from having her action of dower. The other dower is when a son endoweth his wife by the assent of his father, the form of the writ whereof is to be found among the rest, wherein the proceeding is after this manner:—The deforciant shall be summoned as in the other writ of dower, and in like manner his contumacy shall be punished as in the other writ of dower: but if he come at the day given him, then the woman's demand being made, he shall answer thereto; and if the endowment made in the said form and the consent to the dower be denied, and it be established by the country that the husband did endow her at the church door of his father's tenement; and that the father, in his own person or by a special messenger therefore sent, did consent to that dower, the woman shall recover her dower and damages. It is also to be known that in either writ the tenant may vouch to warranty with the aid of the court, and the proceeding in the plea of warranty shall be as is before directed: but there is a difference between this case of dower and that above by præcipe, where the mode of proceeding endeth in the warranty, because there the demandant in that case always recovereth the thing demanded, and the tenant out of the land of the warrantor to the value. In the case of dower it is otherwise, because the tenant will keep his land in peace, and the woman will have to the value of her dower demanded out of the land of the warrantor, provided that the tenant hath of the land of her husband to the value whereby this may be done; but if otherwise not. Concerning other assignment of dower there is nothing said for the present.

Whereas the custom is otherwise in *Wales* than in *England* concerning succession to an inheritance, inasmuch as the inheritance is partible among the heirs male, and from time whereof the memory of man is not to the contrary, hath been partible; our Lord the King will not have that custom abrogated; but willeth that inheritances shall remain partible among like heirs as it was wont to be, and partition of the same inheritance shall be made as it was wont to be made; with this exception, that bastards from henceforth shall not inherit, and also shall not have portions with the lawful heirs, nor without the lawful heirs. And if it happen that any inheritance should hereafter upon the failure of heir male descend unto females, the lawful heirs of their ancestor last seised thereof, we will of our special grace that the same women shall have their portions thereof to be assigned them in our court, although this be contrary to the custom of *Wales* before used.

And whereas the people of *Wales* have besought us that we would grant unto them, that concerning their possessions immoveable, as lands and tenements, the truth may be tried by good and lawful men of the neighbourhood, chosen by consent of parties; and concerning things moveable as of contracts, debts, sureties, covenants, trespasses, chattels, and all other moveables of the same sort, they may use the Welsh law whereto they have been accustomed; which was this, that if a man

complain of another upon contracts or things done in such a place that the plaintiff's case may be proved by those who saw and heard it, when the plaintiff shall establish his case by those witnesses whose testimony cannot be disproved, then he ought to recover the thing in demand, and the adverse party be condemned; and that in other cases which cannot be proved by persons who saw and heard, the defendant should be put to his purgation, sometimes with a greater number, sometimes with less, according to the quality and quantity of the matter or deed. And that in theft if one be taken with the mainour he shall not be admitted to purgation, but be holden for convict. We, for the common peace and quiet of our aforesaid people of our land of *Wales*, do grant the premises unto them: yet so that they hold not place in thefts, larcenies, burnings, murders, manslaughters, and manifest and notorious robberies, nor do by any means extend unto these; wherein we will that they shall use the laws of *England* as is before declared.

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And therefore we command you that from henceforth you do stedfastly observe the premises in all things. So notwithstanding, that whensoever and wheresoever, and as often as it shall be our pleasure, we may declare, interpret, enlarge, or diminish the aforesaid statutes, and the several parts of them according to our mere will, and as to us shall seem expedient for the security of us and of our land aforesaid.

In witness whereof our seal hath been affixed to these presents. Given at *Rothelan*, on *Sunday* in Midlent, in the twelfth year of our reign.

[No. III.] 28 Edward III. c. 2.—Lords of the Marches of *Wales* shall be attendant to the Crown of *England*, and not to the Principality of *Wales*.

'ITEM it is accorded and established, That all the lords of the marches of *Wales* shall be perpetually attending and annexed to the crown of *England*, as they and their ancestors have been all times past, and not to the principality of *Wales*, in whose hands soever the same principality be, or hereafter shall come.'

28 Edward III. c. 2.

[No. IV.] 1 Henry IV. c. 18.—Process against one of the county of *Chester*, which committeth an offence in another Shire.

"ITEM, Upon the grievous clamour and complaint made to our Lord the King in this present Parliament, of many murders, manslaughters, robberies, batteries, and other riots, and offences, which before this time have been done by people of the county of *Chester* to divers of the King's liege people in divers parts and counties of *England*;" the same our Lord the King, by the advice and assent of his Lords Spiritual and Temporal, and of his Commons aforesaid, hath ordained and established, That if any person of the county of *Chester*, resident or dwelling within the same county, of what estate or condition he be, do commit any murder or felony in any place out of the same county, process shall be made against him by the common law, till the exigent, in the county where such murder or felony was done. And if he flee from thence into the county of *Chester*, and be outlawed and put in exigent for such murder or felony, the same outlawry or exigent shall be certified to the officers and ministers of the same county of *Chester*, and the same felon shall be taken by the same officers or ministers, and his lands and tenements, goods and chattels, being within the same county of *Chester*, shall be seized as forfeit into the hands of the Prince, or of him that shall be Lord of the same county of *Chester* for the time, and the King shall have the year and day, and the waste; and the other lands and tenements, goods and chattels of such felon, being out of the said county of *Chester*, shall remain wholly to the

1 Henry IV. c. 18. What process shall be awarded where one of the county of Chester doth commit felony in another county.

No. IV. 1 Hen. IV. c. 18.

The process where one of the county of Chester doth make a battery or other trespass in any other county.

'King, and to other Lords, having thereof franchise, as forfeit. And if 'any person of the same county of *Chester*, resident or dwelling in the 'same, make a battery or other trespass in any place out of the said 'county of *Chester*, process shall be made against him by the common 'law, till the exigent, in the counties where such battery or trespass is 'done. And if he flee from thence into the said county of *Chester*, 'and be outlawed for such battery or trespass, the outlawry shall be 'certified to the officers and ministers of the said county of *Chester*, 'and the same person shall be taken by the same officers or ministers; 'and his goods and chattels, being within the same county of *Chester*, 'shall be seized into the hands of the Prince, or of him which shall be 'Lord of the said county of *Chester* for the time; and his other goods 'and chattels, being out of the said county of *Chester*, shall remain 'wholly to the King, and to other Lords aforesaid, as forfeit, in such 'sort as afore is said.'

[No. V.] 2 Henry IV. c. 12.—Certain Restraints laid on wholly born *Welshmen.*

[No. VI.] 2 Henry IV. c. 16.—If *Welshmen* do not restore to *Englishmen* the Distresses taken by them within seven Days, *Englishmen* may return the like measure to them.

[No. VII.] 2 Henry IV. c. 17.—If a *Welshman* commit a Felony in *England*, and thereof is attainted, and after flieth into *Wales*, upon Certificate of the King's Justices he shall be executed.

[No. VIII.] 2 Henry IV. c. 19.—No Englishman shall be condemned at the Suit of a Welshman in Wales, but only by English Justices, or English Burgesses.

[No. IX.] 2 Henry IV. c. 20.—No Welshman shall purchase land in *England*, nor in the English Towns in *Wales.*

[No. X.] 4 Henry IV. c. 26.—Englishmen shall not be convict by Welshmen in *Wales.*

[No. XI.] 4 Henry IV. c. 27.—There shall be no Wasters, Vagabonds, &c. in *Wales.*

[No. XII.] 4 Henry IV. c. 28.—There shall be no Congregations in *Wales.*

[No. XIII.] 4 Henry IV. c. 29.—Welshmen shall not be armed.

[No. XIV.] 4 Henry IV. c. 30.—No Victual or Armour shall be carried into *Wales*. No. XIV. 4 Hen. IV. c. 30.

[No. XV.] 4 Henry IV. c. 31.—A Welshman shall not have any House of Defence.

[No. XVI.] 4 Henry IV. c. 32.—No Welshman shall be an officer.

[No. XVII.] 4 Henry IV. c. 33.—Castles and walled Towns in *Wales* shall be kept by Englishmen.

[No. XVIII.] 4 Henry IV. c. 34.—No English Man that marrieth a Welsh Woman shall be in any Office in *Wales*.

[No. XIX.] 1 Henry V. c. 6.—No Welshman shall take Revenge against those Englishmen which did pursue their Friends in the late Rebellion.

[No. XX.] 26 Henry VIII. c. 4.—For Jurors in *Wales*.

'WHERE for lack of diligent and sure custody of jurors sworn 'for trials of murtherers, felons and accessaries of felonies and 'murthers in *Wales* and the marches of the same, divers adherents, 'friends and kinsfolk to such offenders, have resorted to the same 'jurors, and have suborned them to acquit divers murtherers, felons 'and accessaries, openly and notoriously known, contrary to equity and 'justice:' It is therefore enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That forthwith, upon the charge given to any inquest hereafter to be taken and sworn before any justicer, steward, lieutenant, or other officer within *Wales* or the marches of the same, of, for and upon any traverse against the King, or the trial of any recognizance broken, or any other forfeiture forfeited to the King, or of, for and upon the trial of any murtherer, felon or accessary of felony or murther, one officer or other person shall be deputed and sworn in the presence of the said justicer or other officer, for the true and diligent keeping of the same jurors; and that the same officer or other person so sworn, without the special commandment of the said justicer or other officer, shall not do, or suffer to be ministered, to the same jurors, any bread, drink, meat, fire or light, nor shall suffer the same jurors to speak to any person or persons; nor the same officer or other person sworn, without the commandment aforesaid, shall not speak to the said jurors, but only to demand of them of their agreement, unto such time as the same jurors shall have given their verdict; any usage or custom heretofore used to the contrary notwithstanding; and if the same officer or other person so sworn in form aforesaid, do not execute and accomplish the premises in the oath before rehearsed in every point and article, then the same officer, or other person so sworn, shall be punished and imprisoned, and make fine and ransom to the King's Highness, by the discretion of the said justicer, steward, lieutenant or other officer.

26 Henry VIII. c. 4.

How an officer sworn for the keeping of jurors in Wales shall demean himself.

II. And also be it enacted by the authority aforesaid, That if the

No. XX. 26 Hen. VIII. c. 4.

The penalty of jurors in Wales committing perjury, or otherwise misdemeaning themselves.

same jurors do acquit any such felon, murtherer or accessary, upon whose trial they shall be charged, or give any untrue verdict against the King, upon the trial of any traverse, recognizance or other forfeiture, contrary to good and pregnant evidence ministered to them by persons sworn before the said justicer, steward, lieutenant or other officer, or that the said jurors, or any of them, do eat, drink, or speak to or with any other person or persons than to such as be sworn with them, or otherwise misdemean themselves after they be sworn, and before they have given their verdict, that then the Lord President, and other of the council of the marches for the time being, upon notice or complaint thereof to them made, shall not only have power and authority by this present Act to call such jurors before them, but also the same justicer, steward or other officer afore whom any such acquittal, untrue verdict or misdemeanor shall happen to be made, shall have full power and authority to compel such jurors, and every of them, upon pain of imprisonment, to be bounden by recognizance in a certain sum of money, by their discretion to be limited, that the same jurors, and every of them, shall personally appear at a certain day, by the same justicer, steward or other officer to be limited, before the Lord President, and other of the council aforesaid for the time being, then and there to abide and stand to such direction and order as the same council shall make, ordain and decree, of, in and upon the same: and that the same council shall thereupon have authority and power, by examination or otherwise, to hear and determine all and every such cause, and shall have like authority to commit every of the same jurors to prison or other punishment, as shall be thought most meet by the discretion of the said council, or otherwise assess or tax every such juror to his fine or ransom by the same discretion, to be paid and levied of their lands, goods and chattels, to the use of the King's Highness.

[No. XXI.] 26 Henry VIII. c. 5.—For the Passage over the *Severn*.

26 Henry VIII. c. 5.

'FORASMUCH as daily divers felonies, robberies and murthers been many times committed and done in the counties of *Gloucester* and '*Somerset* in the parts near adjoining unto the water called the water of '*Severn*, between *England* and *South Wales*, and after such murthers 'and felonies done, the said robbers, felons, and murtherers, with the 'said goods so robbed and stolen, make their conveyance with the said 'goods so stolen, by night, at divers passages or ferries over the said 'river or water, as the passages of *Auste*, *Fremeland*, *Pyrton*, *Arling-* '*ham*, *Newenham*, *Portsedes*, *Poynte*, and all such other like passages 'over the said river into *South Wales*, or into the forest called the 'forest of *Dean*, also adjoining to the same water; and when they be 'over the said water, then the goods so stolen, be by divers privileges 'there kept, albeit the owner and owners have true and perfect know- 'ledge thereof, yet they so robbed and spoiled be without remedy for 'to obtain their said goods so stolen; so that the secret and sudden 'conveyance by night of the said goods over the said ferries and pass- 'ages, doth not only greatly incourage divers persons to come out of 'the parts of *South Wales*, to steal, rob, and murther divers persons 'in their houses in the said counties joining upon the said borders of '*Wales*, but also causeth many robberies and felonies in sundry ways 'to be committed and done upon the said border near adjoining to the 'same river, to the great damage and hurt of the King's subjects inha- 'biting there, unless some remedy therefore be provided:' It may therefore please the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, by the authority of the same to enact, That every person or persons, taking upon him or them to have and keep any of the said passages, or any other passages upon *Severn* aforesaid, from henceforth do not convey, neither carry with any manner barge, boat or other vessel, any

The penalty for transporting offenders into or forth of Wales at unlawful times.

No. XXI. 26 Hen. VIII. c. 5.

person or persons with horses, mares, oxen, kine, or any other cattle, nor no other person or persons, before the time of the sun rising in the morning, and after the time of the sun being gone down at night, upon pain of imprisonment and fine to be set on him that shall so convey or carry over any of the said passages over the said river of *Severn* out of *England* into *Wales* or the forest of *Dean*, or out of *Wales*, or the said forest of *Dean* into *England*, unless the said passengers and every of them, have good knowledge of such person and persons, and of their dwelling-places; and upon request to them made by any person or persons, to disclose the name and the dwelling-place of every such person or persons so by them conveyed over the said water, to any such person or persons requiring the same, if suit be made for and after them upon any outcry, hue or fresh suit, of or for any felony, robbery, murther and manslaughter, committed and done from henceforth.

Keepers of ferries shall be bound to transport no offenders at unlawful times.

II. And that the King's justices of the peace within every of the said counties of *Gloucester* and *Somerset*, at their quarter-sessions, shall have full power and authority to call before them all such persons which hereafter shall keep any of the said passages, or any other ferry or passage over the said water into *Wales* or the said forest, or out of *Wales* or the said forest into *England*, and to bind them with sufficient sureties with them in recognizance in such sums of money as it shall seem to the discretion of the said justices of peace, that they and every of them, being passengers and keepers of ferries and passages as is aforesaid, from henceforth shall not, after the said times before limited and appointed, convey or carry, or cause to be conveyed or carried, any manner of person or persons or any kind of cattle, but such persons as they do know and will answer for, and know where their abidings, dwellings and habitations be, and upon request made to them or any of them as is abovesaid, shall from time to time disclose, as well the same person or persons, as the goods and chattels so passing the said passages, upon fresh suit made or hereafter to be made upon any felony, murther or robbery committed and done in the borders of the counties aforesaid, or in any other place within this realm or *South Wales*.

[No. XXII.] 26 Henry VIII. c. 6.—The Bill concerning Councils in *Wales*.

26 Henry VIII. c. 6.

'FORASMUCH as the people of *Wales* and marches of the same, not 'dreading the good and wholsom laws and statutes of this realm, 'have of long time continued and persevered in perpetration and com- 'mission of divers and manifold thefts, murthers, rebellions, wilful 'burnings of houses and other scelerous deeds and abominable male- 'facts, to the high displeasure of God, inquietation of the King's well- 'disposed subjects, and disturbance of the publick weal, which malefacts 'and scelerous deeds be so rooted and fixed in the same people, that 'they be not like to cease, unless some sharp correction and punish- 'ment for redress and amputation of the premisses be provided, accord- 'ing to the demerits of the offenders:' Be it therefore enacted, &c.

[Murthers, felonies, &c. in Wales to be inquired of in the shires next adjoining, &c.—The long perseverance in wickedness of some lewd people in Wales, and the marches thereof.—All persons shall appear upon lawful summons given, before the justices in the courts in Wales.]

[II. Wrongs done by officers in lordships marchers.—Untrue surmises feigned against them which appear to imprison them.]

[III. The party's remedy against the officer which doth imprison him upon feigned surmises.]

[IV. No weapon shall be brought to courts, fairs or churches in Wales.]

[V. None shall levy any exactions, commorths, or collection, or make games in Wales.—No arthel shall be cast into any court.]

[VI. All courts shall be kept within most sure places.—Indictment in the next county for a felony committed within any lordship marcher.]

No. XXII. 26 Hen. VIII. c. 6.

[VII. Acquittal in lordships marchers no bar.]

[VIII. Justices may award process unto lordships marchers.—A certificate of an outlawry to a lordship marcher, &c.—By what means an offender shall be conveyed from one lordship marcher to another.]

[IX. The officer shall return his precept.—All advantages saved to the offenders.]

[X. An offender attainted of any felony, upon surety found of his good behaviour, may be discharged.]

[XI. No liberties of lord marcher shall be abridged.]

[XII. Where felonies committed in Merioneth in Wales shall be inquired of, heard and determined.—Repealed by 8 El. c. 20.]

[XIII. Where and to whom any offender taken in Wales shall be delivered.]

[No. XXIII.] 27 Henry VIII. c. 5.—For the making of Justices of Peace within *Chester* and *Wales*.

[No. XXIV.] 27 Henry VIII. c. 7.—For the Abuses in the Forests of *Wales*.

27 Henry VIII. c. 7.

'WHERE divers and many forests being in *Wales*, and the marches 'of the same, as well of the inheritance and possessions of our 'sovereign Lord the King, as of divers others being lord marchers; 'within which forests certain unreasonable customs and exactions have 'been of long time unlawfully exacted and used, contrary both to the 'law of God and man, to the express wrong and great impoverishing of 'divers of the King's true subjects, the effect of which said unlawful 'exactions and customs be hereafter declared; that is to wit, It hath 'been there unlawfully used, that if it fortuned any the King's subjects 'to pass, go or ride through or in any way or path of any of the said 'forests, not having upon him or them that so shall fortune to pass, go 'or ride, a token delivered to him or them by the chief foresters, 'rulers, walkers or farmers, the which token shall be well known 'amongst all them that are walkers and rulers under him or them; or 'that he or they that so shall fortune to pass, go or ride in or through 'any of the said forests, be not yearly tributors or chensers, then he or 'they so going, riding or travelling in or through any of the said 'forests, having no token, nor being yearly tributors or chensers, as 'is aforesaid, have used to pay by unlawful exactions unto the said 'foresters, rulers, walkers and farmers of the said forests, a grievous 'fine or reward: And if any person or persons, not having such token 'or tokens, and not being a yearly tributor or a chenser as is aforesaid, 'should happen to be taken, found or espied by any of the said fo'resters, rulers, walkers or farmers, or their assigns, by the space of 'twenty-four foot out of the highway, then he or they so being taken, 'found or espied out of the highway, within any of the said forests as 'is aforesaid, to forfeit and lose unto the said foresters, rulers, walkers 'or farmers, all such money or gold as should be then found upon him 'or them so being taken in any of the said forests, out of the highway 'as is aforesaid.

'II. And also the same person or persons so being taken or found 'out of the highway, to forfeit and lose a joint of one of his or their 'hands, or else to make fine therefore with the said foresters, rulers, 'walkers and farmers, at the will and pleasure of the said rulers, 'walkers or farmers.

'III. And if also that it happen any beast or quick cattle to come, 'go or escape into any of the said forests by stray or thief-stolen, or 'otherwise, the said foresters, rulers, walkers or farmers, after know'ledge to him or them given, have likewise unlawfully used to seize 'and take the same beast or cattle as his or their own, and mark them

'with the marks of their forest there used, and so seized, marked, 'taken, and them retain as cattle forfeited unto their own use; by rea- 'son whereof the owner and owners of the same cattle have been clear 'without remedy for the having again of the said cattle, except only by 'way of redemption or buying again of their own cattle, contrary to all 'equity and conscience:' In consideration whereof, &c.

No. XXIV. 27 Hen. VIII. c. 4.

[IV. All the King's subjects and friends may pass freely through all the forests in *Wales* without payment of any unlawful exactions.—The penalty of such who take unlawful exactions.]

[V. Cattle strayed, being recovered within a year, shall be redelivered to the owner.—The penalty for detaining cattle strayed.]

[No. XXV.] 27 Henry VIII. c. 24.—An Act for re continuing liberties in the Crown.

'WHERE divers of the most ancient prerogatives and authorities 'of justice, appertaining to the imperial Crown of this realm, 'have been severed and taken from the same by sundry gifts of the 'King's most noble progenitors, kings of this realm, to the great dimi- 'nution and detriment of the royal estate of the same, and to the hin- 'drance and great delay of justice:' for reformation whereof, Be it enacted by authority of this present Parliament, That no person or persons of what estate or degree soever they be, from the first day of *July*, which shall be in the year of our Lord God 1536, shall have any power or authority to pardon or remit any treasons, murthers, manslaughters, or any kinds of felonies, whatsoever they be; nor any accessories to any treasons, murthers, manslaughters or felonies; or any outlawries for any such offences afore rehearsed, committed, perpetrated, done or divulged, or hereafter to be committed, done or divulged, by or against any person or persons in any part of this realm, *Wales*, or the marches of the same; but that the King's Highness, his heirs and successors, kings of this realm, shall have the whole and sole power and authority thereof united and knit to the imperial Crown of this realm as of good right and equity it appertaineth; any grants, usages, prescription, Act or Acts of Parliament, or any other thing to the contrary hereof notwithstanding.

27 Henry VIII. c. 24.

No person shall pardon treasons or felonies but the King.

II. And be it also enacted by authority aforesaid, That no person or persons, of what estate, degree, or condition soever they be, from the said first day of *July*, shall have any power or authority to make any justices of eyre, justices of assise, justices of peace, or justices of gaol delivery; but that all such officers and ministers shall be made by letters patents under the King's great seal, in the name and by authority of the King's Highness and his heirs, kings of this realm, in all shires, counties, counties palatine, and other places of this realm, *Wales*, and the marches of the same, or in any other his dominions, at their pleasure and wills, in such manner and form as justices of eyre, justices of assize, justices of peace, and justices of gaol delivery, be commonly made in every shire of this realm; any grants, usages, prescriptions, allowances, Act or Acts of Parliament, or any other thing or things to the contrary thereof notwithstanding.

No person shall make justices but the King.

III. And be it further enacted by authority of this present Parliament, That all original writs and judicial writs, and all manner of indictments of treason, felony and trespass, and all manner of process to be made upon the same, in every county palatine, and other liberty within this realm of *England*, *Wales*, and marches of the same, shall, from the said first day of *July* be made only in the name of our said sovereign Lord the King, and his heirs, kings of *England*; and that every person or persons having such county palatine, or any other such liberty to make such originals, judicials or other process of justice, shall make the *teste* in the said original writs and judicial, in the name of that same person or persons that have such county palatine or liberty.

All writs, &c. in a county palatine shall be made in the King's name.

IV. And that in every writ and indictment that shall be made within

No. XXV. 27 Hen. VIII. c. 24.

any such county palatine or liberty, after the said first day of *July* next coming, whereby it shall be supposed any thing to be done against the King's peace, shall be made and supposed to be done only against the King's peace, his heirs and successors, and not against the peace of any other person or persons whatsoever they be; any Act of Parliament, grant, custom, usage, or allowance in eyre before this time had, granted or used, to the contrary notwithstanding.

Justices assigned within the county palatine of Lancaster.

V. Provided always, That justices of assize, justices of gaol-delivery, and justices of peace, to be made and assigned by the King's Highness within the county palatine of *Lancaster*, shall be made and ordained by commission under the King's usual seal of *Lancaster*, in manner and form as hath been accustomed; any thing in this Act to the contrary thereof notwithstanding.

Towns corporate which have justices.

VI. Provided also, That all cities, boroughs, and towns corporate within this realm, which have liberty, power and authority to have justices of peace, or justices of gaol-delivery, shall still have and enjoy their liberties and authorities in that behalf, after such like manner as they have been accustomed, without any alteration by occasion of this Act; any thing in this Act, or in any article therein contained to the contrary thereof notwithstanding.

Bailiffs and officers of liberties shall attend upon the justices as they have done.

VII. And it is ordained by authority aforesaid, That all stewards, bailiffs, and other ministers of any liberties or franchises, which in times past have used, or ought to attend upon the justices of assize, justices of gaol-delivery, and justices of the peace at large in any county, shall be attendant to the justices of assize, justices of gaol-delivery, and justices of peace of the same shires wherein such liberties and franchises be, and make due execution of all process to them to be directed, for ministration of justice within such liberties or franchises; and that also all such bailiffs, or their deputies or deputy, shall give their attendance and assistance upon the sheriff, together with the sheriff's bailiffs, at all courts of gaol-delivery from time to time, for execution of prisoners according to justice.

Liberties of cities or boroughs not to appear elsewhere.

VIII. Provided always, that the article next above rehearsed shall not in any wise be prejudicial to any stewards or bailiffs of any cities, boroughs or towns corporate set in any shire of this realm, which have privilege that they should not be compelled to attend or appear out of such cities, boroughs or towns wherein they inhabit, but that every such city, borough and town corporate, shall use their said privileges and liberties as heretofore hath been accustomed; any thing in any of the articles above rehearsed to the contrary thereof notwithstanding.

The King shall have the fines, &c. of bailiffs of liberties.

IX. And it is further enacted by authority aforesaid, That the King our Sovereign Lord, his heirs and successors, kings of this realm, from the said first day of *July* next coming, shall have all manner of fines, issues, amerciaments and forfeitures that shall be lost, forfeit or assessed by or upon any stewards, bailiffs, or any other ministers or officers of any franchises or liberties, for non-execution, mis-execution or insufficient returns of such writs, warrants, precepts or other process, which to them, or to any of them, or to any their deputy or deputies, shall be directed, or for any contempt or other misdemeanor whatsoever it be, concerning their offices, in and for the due execution or administration of justice; any grant or allowance, or other thing to the contrary hereof notwithstanding. And that the amerciaments for insufficient returns of writs, or other process made by stewards or bailiffs of liberties or franchises, having returns of writs and execution of the same, shall be put and set upon the heads of such stewards or bailiffs, and not upon the sheriffs.

Fines shall be assessed upon bailiffs of liberties for insufficient returns, and not upon the sheriff.

Purveyors may provide within liberties, notwithstanding any grant.

X. And furthermore it is enacted by authority aforesaid, That purveyors assigned by the King's commission for provisions of his Grace, the Queen and their children, shall and may provide all victuals, corn, and other kind of things whatsoever it be, according to their commissions, as well within liberties and franchises as without; any grants, allowances, or other thing to the contrary or let thereof notwithstanding.

XI. Provided always, That such purveyors shall observe the statutes for them provided in every behalf.

XII. And over this it is ordained by authority aforesaid, That in all such places wheresoever the King's Highness in his own most royal person shall come to rest, tarry, abide, or make his repose within this realm, or any his dominions, within liberty or without, there and within the verge limited and accustomed to his Grace's court, during the time of his abode, his Grace's steward, marshal, coroner, and all other his ministers, shall and may keep their courts for justice, and exercise their offices, as shall appertain to them, according to the laws, statutes, and customs of this realm, as well within liberties as without. And that his Grace's clerks of the market, and none other, during the same time, as well within liberties as without, shall exercise the office of clerk of the market: any privilege, grant, allowance or other thing to the contrary hereof notwithstanding.

The King's officers may keep court within the verge, and his clerk of the market only execute his office there.

XIII. Provided alway, That this article next afore rehearsed, or any thing therein contained, be not in any wise prejudicial to the city of *London*, but that the same city shall have and use such liberties as they might if this article had never been made.

XIV. And be it also enacted by authority aforesaid, That all and every statute, Act and Acts heretofore made and being in force, against sheriffs, their under-sheriffs, bailiffs, or other ministers, for making or returning of panels or juries, or for due execution of serving of any writs or other process, or for taking of fees, or for reformation of extortions, or for any other thing or things concerning their offices, and all pains and penalties contained in every such statute, shall from henceforth be extended to all stewards, bailiffs, and other ministers and officers of liberties and franchises, having returns of writs and executions thereof, in like manner, form and condition as they extend to the sheriffs, their under-sheriffs, bailiffs or other ministers, and as if the said stewards, bailiffs or other ministers, or officers of liberties and franchises had been specially and particularly named and rehearsed in such Statutes.

All statutes made for sheriffs, under-sheriffs, &c. shall be in force against stewards and other ministers of liberties.

XV. Provided alway, That this article next above rehearsed shall not be prejudicial to any steward, bailiffs of franchises, or to their deputy or deputies, or their clerks, for exercising and occupying their offices over and above one year; but that they and every of them may keep and occupy their said offices for so long time as they be, or hereafter shall be given to them, as if this article next afore rehearsed had never been made; any of the said Acts to be expounded and taken against them or any of them to the contrary thereof notwithstanding.

Stewards and bailiffs of franchises may enjoy their offices above one year.

XVI. And it is enacted by authority aforesaid, That all such justices to be made as is afore rehearsed in this Act, shall have authority and power to keep and hold their sessions of peace, and to deliver the same gaols from time to time only within the same liberties and franchises, and in such places, and in none other places, by reason and authority of that commission, and to do and execute all other things within the same, in as ample and large manner as any other justices of peace and gaol-delivery in any shire within this realm may do, and have authority to do; any act, grant, use, custom and allowance heretofore had, made, or used; or any article in this present Act made to the contrary notwithstanding.

XVII. Provided always, That all and singular justices of the peace, gaol-delivery and assize, hereafter to be made, named and appointed by the King's Highness, his heirs and successors, within any liberty where any such justice of peace, gaol-delivery or assize, or any of them, have been made by any person or persons by virtue or authority of any letters patents of the gift or grant of our sovereign Lord the King, or his most noble progenitors, kings of this realm, or otherwise, shall sit and keep their sessions, gaol-delivery and assizes only in such place and places as the justices of the said liberties lately have commonly used within the said liberties. And that no person or persons within the said liberties, or any of them, shall be hereafter in any wise compelled by

The new justices shall sit where commonly such have used to be before.

No. XXV. 27 Hen. VIII. c. 24.

authority of this Act to appear out of the said liberties before any other justices of assize, gaol delivery, or of the peace than before such justices as shall be named and assigned to sit and be by the King's Highness, his heirs and successors, within the said liberties in form abovesaid. And that this Act shall not extend, or be expounded or taken to any other liberty, privilege or franchise, granted, used or had to any person or persons, other than before in this present Act is expressed, and plainly declared and rehearsed; any thing in this Act to the contrary notwithstanding, and as if this Act had never been made.

Sir Thomas Englefield, justice of Chester and Flint.

XVIII. Provided always, That this Act, nor any thing therein contained, be in any wise hurtful or prejudicial unto Sir *Thomas Englefield*, Knight, justice of the county palatine of *Chester* and *Flint*, nor to his deputy or deputies, nor to any of them, of, for or concerning the office of justice or justicer of the said county palatine and *Flint*, nor for or concerning any fees, profits or advantages to the same office in any manner wise appertaining or belonging; but that the said Sir *Thomas*, his deputy and deputies, and every of them, may lawfully have, occupy and exercise the said office, and also receive and take to their own use all manner profits, commodities and advantages to the said office belonging or appertaining, according to the tenor, purport and effect of such letters patents, as before this time were unto the same Sir *Thomas* made under the seal of the said county palatine, or under any other seal, by our said sovereign Lord the King that now is, of, for or concerning the said office and other the premises, or any parcel thereof, in as ample and large manner as though this Act had never been had ne made; any thing in this Act contained to the contrary in any wise notwithstanding.

Cities and towns corporate shall have such liberties, &c. as they had before.

XIX. Provided alway, That this Act, ne any thing therein contained, be in any wise prejudicial or hurtful to any city, borough or town corporate, by what name or names soever they or any of them be incorporate, and their successors, and the successors of every of them, of or for any manner of liberties, privileges, customs, ancient usages and franchises; and also of all manner of fines, issues and amerciaments, and forfeitures, which they or any of them have of the grant or grants of our said sovereign Lord the King, or of any of his noble progenitors, Kings of this realm of *England*; but that the said cities, boroughs and towns corporate, and every of them, and their successors, may have, take, levy and enjoy all and every such lawful liberties, privileges, franchises, customs and usages, in as ample and large manner, and in like form and condition, as they and every of them have lawfully taken, used and had the same before the making of this Act; any thing in this Act to the contrary notwithstanding, and as if this Act had never been had ne made.

The Bishop of Ely and his steward shall be justices of peace within the same isle.

XX. Provided alway, and be it enacted, That *Thomas* now bishop of *Ely*, and his successors, bishops of *Ely*, and their temporal steward of the Isle of *Ely* for the time being, and every of them, shall from henceforth be justices of peace within the said isle, and shall use and exercise all manner of things within the same isle, that appertaineth or belongeth to any justices of peace within any county of this realm of *England* to do, exercise and use, by virtue and authority that they be justices of peace, in as ample and large manner as any other justices of peace in any county within this realm have or might do, exercise or use; any thing or things in this Act contained to the contrary notwithstanding.

The Bishop of Durham and his chancellor.

XXI. Provided alway, and be it enacted, That *Cuthbert* now bishop of *Durham*, and his successors, bishops of *Durham*, and their temporal chancellor of the County Palatine of *Durham* for the time being, and every of them, shall from henceforth be justices of peace within the said County Palatine of *Durham*, and shall exercise and use all manner things within the same county palatine, that appertaineth or belongeth to any justice of peace within any county of this realm of *England* to do, exercise and use, by virtue and authority that they be justices of peace, in as ample and large manner as any other justices of peace in any county within this realm have, or might do, exercise or use, any thing or things in this Act contained to the contrary notwithstanding.

No. XXV. 27 Hen. VIII. c. 24.

The Bishop of York and his temporal chancellor of Hexatoldsham.

XXII. Provided alway, and be it enacted, That *Edward* now archbishop of *York*, and his successors, archbishops of *York*, and their temporal chancellor of the shire and liberty of *Hexam*, otherwise called *Hextoldsham*, for the time being, and every of them shall from henceforth be justices of peace within the said shire and liberty of *Hexam*, otherwise called *Hextoldsham*, and shall exercise and use all manner of things within the said shire and liberty, that appertaineth or belongeth to any justice of peace within any county of this realm of *England* to do, exercise and use, by virtue and authority that they be justices of peace in as large and ample manner as any other justice of peace in any county within this realm have, or might do, exercise or use; any thing or things in this Act contained to the contrary notwithstanding.

[No. XXVI.] 27 Henry VIII. c. 26.—Concerning the Laws to be used in *Wales*.

27 Henry VIII. c. 26.

The causes why a diversity hath been made between the King's subjects of England and Wales.

'ALBEIT the dominion, principality and country of *Wales* justly and righteously is, and ever hath been incorporated, annexed, 'united and subject to and under the imperial crown of this realm, as 'a very member and joint of the same, wherefore the King's most royal 'Majesty of meer droit, and very right, is very Head, King, Lord, 'and Ruler; yet notwithstanding, because that in the same country, 'principality and dominion, divers rights, usages, laws, and customs be 'far discrepant from the laws and customs of this realm, and also because 'that the people of the same dominion have, and do daily use a speech 'nothing like, ne consonant to the natural mother tongue used within 'this realm, some rude and ignorant people have made distinction and 'diversity between the King's subjects of this realm, and his subjects of 'the said dominion and principality of *Wales*, whereby great discord, 'variance, debate, division, murmur and sedition hath grown between 'his said subjects;' his highness therefore of a singular zeal, love and favour that he beareth towards his subjects of his said dominion of *Wales*, minding and intending to reduce them to the perfect order, notice and knowledge of his laws of this his realm, and utterly to extirp all and singular the sinister usages and customs differing from the same, and to bring the said subjects of this his realm, and of his said dominion of *Wales*, to an amicable concord and unity, hath by the deliberate advice, consent and agreement of the Lords Spiritual and Temporal, and the commons, in this present Parliament assembled, and by the authority of the same, ordained, enacted and established. That his said country or dominion of *Wales* shall be, stand and continue for ever from henceforth incorporated united and annexed to and with this his realm of *England*; and that all and singular person and persons, born and to be born in the said principality, country or dominion of *Wales*, shall have, enjoy and inherit all and singular freedoms, liberties, rights, privileges and laws within this his realm, and other the King's dominions, as other the King's subjects naturally born within the same have, enjoy and inherit.

All persons born in Wales shall enjoy all liberty as other subjects in England do.

The laws of England shall be used in Wales.

II. And that all and singular person and persons inheritable to any manors, lands, tenements, rents, reversions, services or other hereditaments, which shall descend after the feast of *All-saints* next coming, within the said principality, country or dominion of *Wales*, or within any particular lordship, part or parcel of the said country or dominion of *Wales*, shall for ever, from and after the said feast of *All-Saints*, inherit and be inheritable to the same manors, lands, rents, tenements, reversions and hereditaments, after the *English* tenure, without division or partition, and after the form of the laws of this realm of *England*, and not after any *Welsh* tenure, ne after the form of any *Welsh* laws or customs, and that the laws, ordinances and statutes of this realm of *England*, for ever, and none other laws, ordinances, ne statutes, from and after the said feast of *All-Saints* next coming, shall be had, used, practised

No. XXVI. 27 Hen. VIII. c. 26.

and executed in the said county or dominion of *Wales*, and every part thereof, in like manner, form and order, as they be and shall be had, used, practised, and executed in this realm, and in such like manner and form as hereafter by this Act shall be further established and ordained; any act, statute, usage, custom, precedent, liberty, privilege, or other thing had, made, used, granted or suffered to the contrary in any wise notwithstanding.

Lordships marchers, and the disorders committed therein.

'III. And forasmuch as there be many and divers lordships marches 'within the said county or dominion of *Wales*, lying between the shires of '*England* and the shires of the said county or dominion of *Wales*, and 'being no parcel of any other shires where the laws and due correction is 'used and had, by reason whereof hath ensued, and hath been practised, 'perpetrated, committed and done, within and among the said lordships 'and countries to them adjoining, manifold and divers detestable murthers, brenning of houses, robberies, thefts, trespasses, routs, riots, 'unlawful assemblies, embraceries, maintenances, receiving of felons, 'oppressions, ruptures of the peace, and manifold other malefacts, con'trary to all laws and justice; and the said offenders thereupon making 'their refuge from lordship to lordship, were and continued without 'punishment or correction; for due reformation whereof, and forasmuch as divers and many of the said lordships marchers be now in the 'hands and possession of our sovereign Lord the King, and the smallest 'number of them in the possession of other lords,' It is therefore enacted by the authority aforesaid, That divers of the said lordships marchers shall be united, annexed and joined to divers of the shires of *England*, and divers of the said lordships marchers shall be united, annexed and joined to divers of the shires of the said country or dominion of *Wales*, in manner and form hereafter following; and that all the residue of the said lordships marchers within the said country or dominion of *Wales*, shall be severed and divided into certain particular counties or shires, that is to say, the county or shire of *Monmouth*, the county or shire of *Brecknock*, the county or shire of *Radnor*, the county or shire of *Montgomery*, the county or shire of *Denbigh*; and that the lordships, townships, parishes, commotes and cantreds of *Monmouth*, *Chepstow*, *Matherne*, *Llanvihangel*, *Magowr*, *Goldecliffe*, *Newport*, *Wenlonge*, *Llanwerne*, *Caerlion*, *Usk*, *Treleck*, *Tintern*, *Skynfreth*, *Gronsmont*, *Witecastle*, *Reglan*, *Calicote*, *Biston*, *Abergavenny*, *Penrose*, *Grenefield*, *Maghen* and *Hochuyslade* in the country of *Wales*, and all and singular honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, townships, hamlets, parishes, commotes and cantreds, and every of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be from and after the said Feast of *All Saints* guildable, and shall be reputed, accepted, named and taken as parts and members of the said shire of *Monmouth*; and that the said town of *Monmouth* shall be named, accepted, reputed, used, had and taken, head and shire-town of the said county or shire of *Monmouth*; and that the sheriff's county or shire court of and for the said shire and county of *Monmouth*, shall be holden and kept one time at the said town of *Monmouth*, and the next time at the town of *Newport*, in the same county or shire, and so to be kept in the same two towns *alternis vicibus*, and according to the laws of this realm of *England* for ever, and in none other places.

Divided into shires.

Monmouth and the towns within the same.

Actions in the county of Monmouth.

IV. And it is further enacted by the authority aforesaid, That all actions reals that hereafter shall be conceived, perpetrated or sued for any lands, tenements or hereditaments, or any other thing within the said county or shire of *Monmouth*, and all actions personals within the same shire or county of the sum of *xl. s.* or above, and all actions mixt, shall be sued by original writ out of the King's High Court of Chancery in *England*, and heard, determined and tried before the King's justices in *England*, or by assize or *nisi prius* within the said county of *Monmouth*, in such like manner, form and wise, as all other actions reals, personals, and actions mixt, be sued, heard, determined and tried in or

The King's justices may award venire fac. into Monmouth, &c.

for any shire of this realm of *England;* and that the King's justices of his bench, or of his common bench of *Westminster*, shall have full power and authority to direct all manner process to the sheriff and all other officers of the said county of *Monmouth*, and also to direct writs of *venire facias* to the same sheriff, for the trial of every issue joined before them: and also to award commissions of *nisi prius* into the said county of *Monmouth*, for the trial of such issues joined before them, in like manner and form as they do into every shire of this realm of *England;* and all and every the King's subjects and inhabitants within the said county of *Monmouth*, shall be for ever, from and after the said feast of *All Saints*, obliged and bounden to be obedient and attendant to the Lord Chancellor of *England*, the King's justices, and other of the King's most honourable council, and unto all laws, customs, ordinances and statutes of this realm of *England*, in like manner, form and wise, as all other the King's subjects within every shire of this realm of *England* be obliged and bounden; any Act, statute, usage, custom, liberty, privilege, or any other thing to the contrary in any wise notwithstanding; and that the sheriff of the said county shall hold plea of *replegiare*, and all other suits and plaints under forty shillings, in his county or shire court, in like manner and form as all other sheriffs do within this realm of *England;* and that the sheriff, escheators, and coroners, that hereafter shall be within the said county or shire of *Monmouth*, shall be obliged and bounden to execute all the King's processes, and to make due returns thereof, and to use and exercise their offices according to the laws and statutes of this realm of *England*, in all and every thing, as the sheriffs, escheators and coroners be obliged and bounden to do in all and every other shire of this realm of *England;* and that the sheriffs and escheators of the said shire or county of *Monmouth*, that hereafter shall be appointed by our Sovereign Lord the King, make their accounts for their said offices in the King's Exchequer in *England*, in like manner and form as other sheriffs and escheators do within this realm of *England*, and upon such like pain and penalty as is upon other sheriffs and escheators in every other shire within this realm of *England* (1).

The sheriff's and escheator's of Monmouth's duties.

Brecknockshire.

V. And it is enacted by the authority aforesaid, That the lordships, townships, parishes, commotes and cantreds of *Brecknock*, *Crickhowell*, *Tretowre*, *Penkelly*, *English-talgarth*, *Welsh-talgarth*, *Dynas*, the *Haye*, *Glynebough*, *Broyulles*, *Cantercely*, *Lando*, *Blaynllinby*, *Estrodew*, *Buelthe*, and *Lingros*, in the said country or dominion of *Wales*, and all and singular honours, lordships, castles, manors, lands, tenements, and hereditaments, lying or being within the compass or precinct of the said lordships, parishes, commotes and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever from the said feast of *All Saints* guildable, and shall be reputed, accepted, named and taken as parts and members of the said county or shire of *Brecknock*, and that the said town of *Brecknock* shall be named, accepted, reputed, used, had and taken, head and shire-town of the said shire or county of *Brecknock;* and that the shire court or county of and for the said shire or county of *Brecknock*, shall be holden and kept in the said town of *Brecknock*.

Radnorshire.

VI. And it is enacted by the authority aforesaid, That the lordships, townships, parishes, commotes and cantreds of *New Radnor*, *Elistherman*, *Elue-les*, *Bonghread*, *Glaseberry*, *Glowdistre*, *Mihelles Church*, *Meleneth*, *Blewagh*, *Knighton*, *Norton*, *Preston*, *Commothuder*, *Rayder*, *Gwethronyon*, and *Stanage*, in the said country of *Wales*, and every of them, and all and singular honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being

(1) Notice having been given for the trial of a cause at *Monmouth*, which arose in *Glamorganshire*, as being in fact the next English county since the stat. 27 Hen. VIII. c. 26. s. 4., though *Hereford* be the common place of trial; the court refused to set aside the verdict as for a mis-trial, on motion: the question being open on the record. Ambrose *v.* Rees, 11 E. R. 370.

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within the compass or precinct of the said lordships, townships, parishes, commotes and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever, from the said feast of *All Saints*, guildable, and shall be reputed, accepted, named and taken as parts and members of the said county or shire of *Radnor*; and that the said town of *New Radnor* shall be named, accepted, reputed, used, had and taken head and shire-town of the said county or shire of *Radnor*; and that the shire-court or county of and for the said county or shire of *Radnor*, shall be holden and kept one time at the said town of *New Radnor*, and the next time at the town of *Rothergowy*, in the same county or shire, and so to be kept in the said two towns *alternis vicibus* for ever, and in none other place.

The county court of Radnor.

Montgomeryshire.

VII. And it is enacted by the authority aforesaid, That the lordships, townships, parishes, commotes and cantreds of *Montgomery*, *Kedewenkerry*, *Cawrsland*, *Arustely*, *Keviliock*, *Doythur*, *Powesland*, *Clunesland*, *Balesley*, *Tempcester* and *Alcester*, in the said country of *Wales*, and every of them, and all and singular honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, parishes, townships, commotes and cantreds, or in any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever, from the said feast of *All Saints*, guildable, and shall be reputed, accepted, named and taken, as parts and members of the said county or shire of *Montgomery*; and that the said town of *Montgomery* shall be named, accepted, reputed, used, had and taken head and shire-town of the said county of *Montgomery*; and that the county or shire-court of and for the said county or shire of *Montgomery*, shall be holden and kept the first time at the said town of *Montgomery*, and the next time at the town of *Maghenleth*, in the same shire or county, and so to be kept in the same two towns *alternis vicibus* for ever, and in none other place.

Denbighshire.

VIII. And also it is enacted by the authority aforesaid, That the lordships, townships, parishes, commotes and cantreds of *Denbighland*, *Ruthin*, *Saint Tasse*, *Kinllethowen*, *Bromfilde*, *Yale*, *Chirke* and *Chirkeland*, *Molesdale* and *Hopesdale*, in the said country of *Wales*, and every of them, and all and singular honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, townships, commotes and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever, from the said feast of *All Saints*, guildable, and shall be reputed, accepted, named and taken as parts and members of the said county or shire of *Denbigh*; and that the said town of *Denbigh* shall be named, accepted, reputed, used, had and taken head and shire-town of the county or shire of *Denbigh*; and that the county or shire-court of and for the said county or shire of *Denbigh*, shall be holden and kept the first time at the said town of *Denbigh*, and the next time at the town of *Wrixham* in the said shire or county, and so to be kept in the same two towns *alternis vicibus* for ever, and in none other place.

The King shall have a Chancery and Exchequer at Brecknock, and another at Denbigh.

'IX. And forasmuch as the counties and shires of *Brecknock*, *Radnor*, '*Montgomery* and *Denbigh* be far distant from the city of *London*, 'where the laws of *England* be commonly used, ministered, exercised, 'and executed: and for that the inhabitants of the said shires of *Brecknock*, *Radnor*, *Montgomery*, and *Denbigh*, be not of substance, power, 'and ability to travel out of their countries to seek the administration 'of justice;' It is therefore enacted by the authority aforesaid, That the King our sovereign Lord shall have one Chantery and Exchequer at his castle of *Brecknock*, and one other at his town and castle of *Denbigh*; and that the sheriffs, escheators, and other officers accomptants of the counties of *Brecknock*, *Radnor*, *Montgomery* and *Denbigh*, from and after the said feast of *All Saints*, shall be yearly appointed by our Sovereign Lord the King, for and within every of the said shires of

The accounts of the sheriffs, escheators, and other officers.

Brecknock, *Radnor*, *Montgomery* and *Denbigh*; and that the sheriffs, escheators and other officers accomptants of the counties of *Brecknock* and *Radnor*, from and after the said feast of *All Saints*, shall yearly make their accompts before the King's auditors, and such chamberlain or baron of the said Exchequer, as shall be thereunto appointed by our said Sovereign Lord the King, in such like manner and form as sheriffs, escheators and other officers accomptants do yearly make their accompts in the King's Exchequer at *Westminster* within this realm of *England*: And that the sheriffs, escheators and other officers accomptants of the counties of *Montgomery* and *Denbigh*, from and after the said feast of *All Saints*, shall yearly make their accompts before the King's auditors, and such chamberlain or baron of the said Exchequer, as shall be thereunto appointed by our said Sovereign Lord the King, in such like manner and form as sheriffs, escheators and other officers accomptants do yearly make their accompts in the King's Exchequer at *Westminster* within this realm of *England*.

Justice used in Brecknock, Radnor, Montgomery and Denbigh.

X. And that justice shall be ministered, used, exercised and executed unto the King's subjects and inhabitants in every of the said shires of *Brecknock*, *Radnor*, *Montgomery* and *Denbigh*, according to the laws and statutes of this realm of *England*, and according to such other customs and laws now used in *Wales* aforesaid, as the King our Sovereign Lord and his most honourable council shall allow and think expedient, requisite and necessary, by such justicer or justicers as shall be thereunto appointed by our said Sovereign Lord the King, and after such form and fashion as justice is used and ministered to the King's subjects within the three shires of *North Wales*.

Towns annexed to the county of Salop.

XI. And also it is enacted by the authority aforesaid, That the lordships, towns, parishes, commotes, hundreds and cantreds of *Oswester*, *Whetington*, *Masbroke*, *Knoking*, *Ellesmer*, *Downe*, and *Churbury* hundred in the marches of *Wales* aforesaid, and every of them, and all and singular honours, lordships, castles, manors, towns, hamlets, lands, tenements and hereditaments lying or being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever, from and after the said feast of *All Saints*, guildable, and shall be united, annexed and joined to and with the county of *Salop*, as a member, part or parcel of the same; and that the said lordships of *Oswester*, *Whetington*, *Masbroke*, and *Knoking*, with their members, shall be taken, named and known by the name of the hundred of *Oswester* in the county of *Salop*; and the inhabitants thereof shall be attendant and do every thing and things at every sessions, assize and gaol delivery, to be holden within the county of *Salop*, as the inhabitants of all other hundreds do within the said county of *Salop*, according to the laws of this realm of *England*.

Oswester hundred in the county of Salop.

Ellesmer in Pymhill hundred.

And that the lordship of *Ellesmer*, with the members of the same, shall be united, joined and knit to the hundred of *Pymhill* in the county of *Salop*, and shall be taken, named and known to be parcel of the same hundred; and the inhabitants thereof shall be attendant and do every thing and things with the inhabitants of the said hundred of *Pymhill*, as the inhabitants of the same hundred now do and use, according to the laws of this realm of *England*.

Downe in Churbury hundred.

And that the lordship of *Downe*, with the members, shall be united, joined and knit to the hundred of *Churbury* in the county of *Salop*; and that the inhabitants of the said hundred of *Churbury* and lordship of *Downe* shall be attendant and do every thing and things at every sessions, assize and gaol delivery, to be holden within the said county of *Salop*, as the inhabitants of all other hundreds do within the said county of *Salop*, according to the laws of this realm of *England*. And that the said hundred of *Churbury*, after the said feast of *All Saints*, nor the said hundred of *Oswester*, nor yet the lordship of *Ellesmer*, shall be in no wise otherwise privileged, nor have no other liberty nor privilege, but as hundreds united, annexed and knit to the said county of *Salop*, as other hundreds be within the said county.

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Towns annexed to the county of Hereford.

XII. And that the lordships, towns, parishes, commotes, hundreds and cantreds of *Ewyas Lacy*, *Ewyas Harold*, *Clifford*, *Wynfortan*, *Yerdesley*, *Huntington*, *Whytney*, *Wygmore*, *Logharneys* and *Stepulton* in the said marshes of *Wales*, and every of them, and all and singular honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be for ever, from and after the said feast of *All Saints*, guildable, and shall be united, annexed and joined to and with the county of *Hereford*, as a member, part or parcel of the same county of *Hereford*; and that the lordships of *Wygmore* and *Logharneys*, with their members, shall be taken, named and known by the name of the hundred of *Wygmore* in the county of *Hereford* aforesaid; and that the inhabitants thereof shall be attendant and do every thing and things at every sessions, assize and gaol delivery, to be holden within the said county of *Hereford*, as the inhabitants of all other hundreds do within the said county of *Hereford*, according to the laws of this realm of *England*. And that the whole lordship of *Ewyas Lacy*, with the members, shall be taken, named and known by the name of the hundred of *Ewyas Lacy* within the said county of *Hereford*; and the inhabitants thereof shall be attendant and do every thing and things at every sessions, assize and gaol delivery, to be holden within the said county of *Hereford*, as the inhabitants of all other hundreds do within the said county of *Hereford*, according to the laws of this realm of *England*. And that the lordship of *Ewyas Harold*, with the members, shall be united, joined and knit to the hundred of *Webtree* in the said county of *Hereford*, and shall be taken, named and known to be parcel of the said hundred of *Webtree*; and the inhabitants thereof shall be attendant and do every thing and things with the inhabitants of the same hundred of *Webtree*, as the inhabitants of the same hundred now do, according to the laws of this realm of *England* And that the lordships of *Clifford*, *Wynforton*, *Yerdesley*, *Whitney* and *Huntingdon*, with their members, shall be taken, named and known by the name of the hundred of *Huntingdon*, within the county of *Hereford* aforesaid, and that the inhabitants thereof shall be attendant and do every thing and things at every sessions, assize and gaol delivery, to be holden within the said county of *Hereford*, as the inhabitants of all other hundreds do within the said county of *Hereford*, according to the laws of this realm of *England*. And that the said hundred of *Wygmore*, with the members, and the said hundred of *Ewyas Lacy*, and the said hundred of *Huntington*, and the said lordship of *Ewyas Harold*, annexed unto the hundred of *Webtree*, after the said feast of *All Saints*, shall be in no wise otherwise privileged, nor have no other liberty, franchises, nor privilege but as hundreds united and annexed to the said county of *Hereford*, and as other hundreds be within the said county of *Hereford*.

Towns in the marches of Wales annexed to the county of Gloucester.

XIII. And that the lordships, towns and parishes of *Wollastone*, *Tidnam* and *Bechley*, in the said marches of *Wales*, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being between *Chepstow* bridge in the said marches of *Wales* and *Gloucestershire*, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the said county or shire of *Gloucester*, as a member, part or parcel of the same. And that the said lordships, towns and parishes of *Wollastone*, *Tidnam* and *Bechley*, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being between *Chepstow* bridge and the shire of *Gloucester* as is aforesaid, shall be united, joined, and knit to the hundred of *Wesebery* within the said shire of *Gloucester*, and shall be taken, named and known to be part and parcel of the same hundred, and the inhabitants thereof shall be attendant and do every thing and things with the inhabitants of the said hundred

of *Wesebery*, as the inhabitants of the same hundred now do, according to the laws of this realm of *England*. And that the said lordships of *Wollastone*, *Tidnam* and *Bechley* after the said feast of *All Saints* shall be in no wise privileged, nor have any other liberty, franchise, ne privilege, but as parcel of the said hundred of *Wesebery* in the said county of *Gloucester*.

Towns annexed to the county of Glamorgan.

XIV. And that the lordships, towns, parishes, commotes, hundreds and cantreds of *Gowerkilvy*, *Bishops Town*, *Llandaffe*, *Singhnithe supra*, *Singhnithe subtus*, *Maskin*, *Ogmore*, *Glynerotheney*, *Tallagarney*, *Ruthien*, *Tallavan*, *Lanblethyan*, *Lantwid*, *Tyeryal*, *Avan*, *Nethe*, *Landewey*, and the *Clays* in the said country of *Wales*, and every of them, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable for ever from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the county of *Glamorgan*, as a member, part or parcel of the same. And that the said shire of *Glamorgan* and *Mordonnoke*, and all the aforesaid lordships, towns, parishes, commotes, hundreds and cantreds, united and annexed to the said county of *Glamorgan*, shall from and after the said feast of *All Saints*, be reputed, named, accepted and known by the name and shire of *Glamorgan* only, and by none other name.

Glamorganshire.

XV. And that from and after the said feast of *All Saints*, justice shall be ministered and executed to the King's subjects and inhabitants of the said county of *Glamorgan*, according to the laws, customs and statutes of this realm of *England*, and after no *Welsh* laws, and in such form and fashion as justice is ministered and used to the King's subjects within the three shires of *North Wales*.

Towns annexed to the county of Kayermarthen.

XVI. And that the lordships, towns, parishes, commotes, hundreds, and cantreds of *Lanemthevery*, *Abermerlese*, *Kedwely*, *Eskenning*, *Cornewolthou*, *Newcastle*, *Emel*, *Abergoyly*, in the said country of *Wales*, and every of them, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable for ever, from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the county of *Kayermarthen*, as a member, part, or parcel of the same; and that from and after the said feast of *All Saints*, justice shall be ministered and executed to the King's subjects and inhabitants of the said county of *Kayermarthen*, according to the laws, customs, and statutes of this realm of *England*, and after no *Welsh* laws, and in such form and fashion as justice is ministered and used to the King's subjects within the three shires of *North Wales*.

Towns annexed to the county of Pembroke.

XVII. And that the lordships, towns, parishes, commotes, hundreds and cantreds of *Haverfordwest*, *Kilgarran*, *Lansteffan*, *Langeharne*, otherwise called *Tallangherne*, *Walwynscastle*, *Dewysland*, *Lannehadein*, *Lanfey*, *Herberth*, *Slebeche*, *Rosmarket*, *Castellan* and *Landofleure*, in the said country of *Wales*, and every of them, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying and being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable for ever; from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the county of *Pembroke*; and that from and after the said feast of *All Saints*, justice shall be ministered and executed to the King's subjects and inhabitants of the said county of *Pembroke*, according to the laws, customs and statutes of this realm of *England*, and after no *Welsh* laws, and in such form and fashion as justice is ministered and used to the King's subjects within the three shires of *North Wales*.

No. XXVI. 27 Hen. VIII. c. 26.

Towns annexed to the county of Cardigan.

XVIII. And that the lordships, towns, parishes, commotes, hundreds and cantreds of *Tregaron*, *Glenergine*, *Landway*, *Ureny*, in the said country of *Wales*, and every of them, and all honours, lordships, castles, manors, lands, tenements and hereditaments, lying or being within the compass or precinct of the said lordships, towns, parishes, commotes, hundreds and cantreds, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable for ever, from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the county of *Cardigan*, as a member, part and parcel of the same; and that from and after the said feast of *All Saints*, justice shall be ministered and executed to the King's subjects and inhabitants of the said county of *Cardigan*, according to the laws, customs and statutes of this realm of *England*, and after no *Welsh* laws, and in such form and fashion as justice is ministered and used to the King's subjects within the three shires of *North Wales*.

Towns annexed to the county of Merioneth.

XIX. And that the lordship, town and parish of *Mouthway*, in the said country of *Wales*, in whose possession soever it be, and all lands, tenements and hereditaments now lying or being within the compass or precinct of the said lordship, town and parish of *Mouthway*, or any of them, in whose possession soever they be or shall be, and every part thereof, shall stand and be guildable for ever, from and after the said feast of *All Saints*, and shall be united, annexed and joined to and with the county of *Merioneth*, in *North Wales*, as a commote, member, part or parcel of the same.

Sessions courts, leets, &c. shall be kept in the English tongue.

XX. Also be it enacted by the authority aforesaid, That all justices, commissioners, sheriffs, coroners, escheators, stewards, and their lieutenants, and all other officers and ministers of the law, shall proclaim and keep the sessions courts, hundreds, leets, sheriffs courts, and all other courts in the *English* tongue; and all oaths of officers, juries and inquests, and all other affidavits, verdicts and wagers of law, to be done and given in the *English* tongue; and also that from henceforth no person or persons that use the *Welsh* speech or language, shall have or enjoy any manner office or fees within this realm of *England*, *Wales*, or other the King's dominion, upon pain of forfeiting the same offices or fees, unless he or they use and exercise the *English* speech or language.

These sheriffs shall put every misruled person under common mainprize.

XXI. And it is further enacted by the authority aforesaid, That it shall be lawful to the sheriff of every of the foresaid shires of *Monmouth*, *Brecknock*, *Radnor*, *Montgomery* and *Denbigh*, and every of them, to put every misruled and suspect person within their sheriffwick, under common mainprise and surety of their personal appearance, as the sheriffs do within every of the three shires of *North Wales*, and that the recognizances of such common mainprize and surety of appearance taken before any of the said sheriffs, shall be as good and effectual as if it were taken by any justice of record.

Certificate of recognizance in Monmouth.

XXII. And that the sheriff of the county of *Monmouth* shall certify such recognizances, common mainprize and surety of appearance, at every quarter sessions, before the justices of the peace of the said county of *Monmouth*; and that every person or persons within the said county of *Monmouth*, put under common mainprize, and bound to his personal appearance, shall keep their personal appearance at the sessions holden within the said shire of *Monmouth*, next after the clause of *Easter*, and at the sessions to be holden within the said shire next after the feast of Saint *Michael* the archangel, until such time that they be thereof released after the form of the law.

Certificate of recognizances.

XXIII. And that every of the sheriffs of the said counties of *Brecknock*, *Radnor*, *Montgomery*, and *Denbigh*, and every of them, shall certify such recognizances, common mainprize or surety of appearance by them taken, before such justice as shall be appointed by our Sovereign Lord the King within every of the said shires, at every sessions to be holden in any of the said shires before the same justice.

Appearance of them which are bound.

XXIV. And that every person and persons within the said counties of *Brecknock*, *Radnor*, *Montgomery* and *Denbigh*, and also within the abovenamed counties of *Glamorgan*, *Kayermarthen*, *Pembroke* and *Car-*

digan, or any of them, put under common mainprize, and bound to his or their personal appearance, as well by the aforesaid sheriffs, as by the justices of any of the said counties, shall keep their appearances before the said justices at every sessions within the said counties to be holden, in such like manner and form as is used in the three shires of *North Wales*.

'XXV. And for that the lords marchers before this present Parliament have used to put their tenants within their lordships marchers under such common mainprize and surety of appearance, and have had the forfeitures thereof, which for ever from and after the said feast of *All Saints*, shall utterly cease and determine:' Therefore be it enacted by the authority aforesaid, That after the said feast of *All Saints*, every lay and temporal person now being a lord marcher, shall have the moiety or half of every forfeiture of all and every common mainprize, recognizance for the peace or appearance, forfeited by any of their tenants inhabiting within any of their lordships marchers; and they to be paid the same moiety or half by the hands of the sheriffs of every of the said counties where such forfeitures shall be, if the sheriff can levy the same; and the same sheriff to account to our Sovereign Lord the King for the other half or moiety in such Exchequer as they be bound to be accomptant.

Lord marcher shall have half the forfeiture of his tenants.

XXVI. Be it further enacted by the authority aforesaid, That immediately upon the prorogation or dissolution of this present Parliament, the Lord Chancellor of *England* shall direct the King's commission under his grace's great seal, to such persons as to him shall be thought convenient, to inquire and view all the said shires of *Kayermarthen*, *Pembroke*, *Cardigan*, *Monmouth*, *Brecknock*, *Radnor*, *Mountgomery*, *Glamorgan* and *Denbigh*, and every part and parcel of them; and upon such view and search, to divide them and every of them into so many hundreds as they shall think most meet and convenient; and the hundreds so divided shall return and certify with the said commission into the High Court of Chancery before the said feast of *All Saints*, and the same to remain of record, and to be of such force and effect as it were by Act of Parliament; and that the said hundreds, after the said certificate, shall be used and taken as other hundreds be in every other shire within this realm of *England*.

Commissions to divide the shires of Wales into hundreds.

XXVII. Furthermore it is enacted by the authority aforesaid, That immediately after the prorogation or dissolution of this present Parliament, the Lord Chancellor of *England* shall direct the King's commission under his grace's great seal to such persons as to him shall be thought convenient, to inquire and search out, by all ways and means that they can, all and singular laws, usages and customs used within the said dominion and country of *Wales*; and the same shall return and certify to the King's Highness, and his most honourable council, before the said feast of *All Saints* next coming; and that upon deliberate advice thereof had and taken, all such laws, usages and customs as the King's Highness, and his said most honourable council shall think expedient, requisite and necessary to be had, used and exercised in the before rehearsed shires, or any of them, or in any other shire of the dominion or country of *Wales*, shall stand and be of full strength, virtue and effect, and shall be for ever inviolably observed, had, used and executed in the same shires, as if this Act had never been had ne made; any thing in the same Act contained to the contrary in any wise notwithstanding.

Commissions to inquire into the laws and customs of Wales.

XXVIII. And it is further enacted by the authority aforesaid, That for this present Parliament, and all other Parliaments to be holden and kept for this realm, two knights shall be chosen and elected to the same Parliament for the shire of *Monmouth*, and one burgess for the borough of *Monmouth*, in like manner, form and order, as knights and burgesses of the Parliament be elected and chosen in all other shires of this realm of *England*, and that the same knights and burgesses shall have like dignity, pre-eminence and privilege, and shall be allowed such fees, as other knights and burgesses of the Parliament have been allowed; and the

Two knights for the shire of Monmouth, and one burgess for the town.

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knights fees to be levied, perceived, received, gathered and paid in such manner, form and order as such fees be gathered, levied, perceived, received and paid in other shires of this realm of *England*; and the burgesses fees to be levied as well within the borough of *Monmouth* as within all other ancient boroughs within the said shire of *Monmouth*.

Knights and burgesses for the Parliament in Wales, and their fees.

XXIX. And that for this present Parliament, and all other Parliaments to be holden and kept for this realm, one knight shall be chosen and elected to the same Parliaments for every of the shires of *Brecknock*, *Radnor*, *Montgomery* and *Denbigh*, and for every other shire within the said country or dominion of *Wales*; and for every borough being a shire town within the said country or dominion of *Wales*, except the shire town of the foresaid county of *Merioneth*, one burgess; and the election to be in like manner, form and order, as knights and burgesses of the Parliament be elected and chosen in other shires of this realm; and that the knights and burgesses, and every of them, shall have like dignity, pre-eminence and privilege, and shall be allowed such fees, as other knights of the Parliament have and be allowed; and the knights fees to be levied and gathered of the Commons of the shire that they be elected in; and the burgesses fees to be levied and gathered as well of the boroughs and shire towns as they be burgesses of, as of all other ancient boroughs within the same shires.

Lords marchers shall keep their liberties.

XXX. And it is further enacted by the authority aforesaid, That all and every lay and temporal person and persons now being lords marchers, and having any lordships marchers or lordships royal, shall from and after the said feast of *All Saints* have all such myses and profits of their tenants as they have had or used to have at their first entry into their lands in times past, and also shall have, hold and keep, within the precinct of their lordships, courts baron, courts leet and law days, and all and every thing to the same courts belonging; and also shall have, within the precinct of the said lordships or law day, waife, straife, infanthef, outfanthef, treasuretrove, deodands, goods and chattels of felons, and of persons condemned or outlawed of felony or murther, or put in *exigent* for felony or murther, and also wreck *de Mer*, wharfage and customs of strangers, as they have had in times past, and as though such privileges were granted unto them by our Sovereign Lord the King by point of charter; any thing in this present Act to the contrary notwithstanding.

Customs of North Wales and county palatine of Lancaster saved.

XXXI. Provided alway, That this present Act, nor any thing therein contained, shall take away or derogate any laws, usages, or laudable customs now used within the three shires of *North Wales*; nor shall not deprive nor take away the whole liberties of the duchy of *Lancaster*, but that the said liberties shall continue and be used in every lordship, parcel of the said duchy, within the dominion and country of *Wales*, as the liberties of the said duchy be used in shire ground, and not county palatine, within this realm of *England*.

Reservation of patents.

XXXII. Provided also, That this Act, nor any thing therein contained, do not extend nor be prejudicial to any person or persons, to avoid any patent, joint patent of any office fees or annuities, or reversion of any office fees or annuities to them granted for term of their life or lives, by our Sovereign Lord the King, or by any other person or persons, either for the using, exercising or occupying any manner of office or otherwise; but that they shall have and enjoy their said fees, and all other offices or constableships, portership, stewardships of leets, law days, court barons and other offices, being not repugnant against this Act; and in case any such offices be repugnant against this Act, that then the grantees to have and enjoy their fees during their life or lives; any article or clause in this present Act to the contrary in any wise notwithstanding.

Earl of Worcester justice of Glamorgan.

XXXIII. Provided also, That this Act, nor any thing therein contained, be not in any wise prejudicial to the right honourable *Henry* earl of *Worcester*, for the exercising, using and occupying the office of the justice of the whole county of *Glamorgan*; any thing in this present Act contained to the contrary in any wise notwithstanding.

26 H. 8. c. 6.

XXXIV. Provided also, That this Act, nor any thing therein contained, extend not to deprive, take away or derogate any other Acts before this time made for the trial of treason, murther or felonies, or accessaries of the same, committed and done in any lordship marcher in *Wales*, in the next shires of *England* adjoining to the said lordship marcher.

Lands partable.

XXXV. Provided alway, That lands, tenements and hereditaments lying in the said country and dominion of *Wales*, which have been used time out of mind, by the laudable customs of the said country, to be departed and departable among issues and heirs males, shall still so continue and be used in like form, fashion and condition, as if this Act had never been had nor made; any thing in this Act to the contrary thereof notwithstanding.

The King may suspend or revoke this statute.

XXXVI. Provided also, and be it enacted by the authority aforesaid, That the King's Highness, notwithstanding this Act, or any thing therein contained, shall have power and authority for the term of three years next after the end and dissolution of this present Parliament, to suspend for such time as shall please his grace, or utterly to repeal, revoke and abrogate, this whole Act or any part thereof, from time to time, as shall stand with his most gracious pleasure, so that every such suspending, repeal and revocation from time to time, as often as any such case shall happen, shall be made in writing under the great seal of *England*, and be annexed to the roll of this present Parliament wherein this Act shall be inrolled, and proclamations thereupon to be made in every shire within the said country and dominion of *Wales*; and that every such suspending, repeal and revocation, so to be had and made by the King's Highness, shall be as good and effectual to all intents and purposes, as if the same had been done by authority of this present Parliament; this Act, or any thing therein contained to the contrary thereof notwithstanding.

The King may erect in Wales so many courts and justices, &c. as he will.

'XXXVII. And whereas by this present Act there is appointed one 'Chancery and one Exchequer at *Brecknock*, and another Chancery 'and Exchequer at *Denbigh*,' it is enacted by authority aforesaid, That the King's Highness, from time to time, within the term of five years next after the end of this Parliament, for the due ministration of justice in the said country of *Wales*, shall have power and authority to erect, make and ordain such court or courts, and so many courts of record, and such and so many justices, ministers, officers and clerks, as by his Highness within the time of five years next after the end of this present Parliament shall be thought sufficient and convenient, as well for the due execution of this Act, or of any thing or things that shall be had done or made by authority of the same, as for the good governance and rule of the said country of *Wales*.

The office of prothonotary and clerk of the crown.

XXXVIII. Provided alway, That this Act, or any thing or things to be done by authority thereof, shall not be prejudicial to any person or persons, which now have by the King's letters patents any office or offices of prothonotary or clerk of the crown in the said country or dominion of *Wales*; but that they and every of them shall and may still have and use their offices in as large and ample manner, form, fashion and condition, as if this Act, nor any thing to be done by authority thereof, had never been had or made; any thing in this Act to the contrary thereof notwithstanding.

Lord Ferrer's office in Wales reserved.

XXXIX. Provided also, That this Act, or any thing therein contained, extend not, or in any wise be prejudicial or hurtful to Sir *Walter Devereux*, knight of the noble order of the Garter, and Lord *Ferrers* of *Chartley*, of for and concerning the offices of chief justice of *South Wales*, the office of chamberlain of *South Wales*, and of the counties of *Carmarden*, and *Cardiggn* in *South Wales* aforesaid, and of and for the office of the stewardship of the lordship of *Bealth*, in the marches of *South Wales*, and of and for the office of receivership of the said lordship of *Bealth*, or of, for or concerning any of the said offices; but that the said Lord *Ferrers* may have, use, exercise and enjoy the said offices, and every of them, with all fees, wages, emoluments, commodities and

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profits to the same offices, or to any of them in any wise belonging or appertaining, in as large and ample manner, form and condition, as if the said Act had never been had or made.

[No. XXVII.] 33 Henry VIII. c. 13.—Lordships in *Wales* removed from the county of *Denbigh* to the county of *Flint*, &c. When and where the shire court of *Chester* shall be kept. There shall be two coroners chosen for the county of *Chester*. When the sessions for the county of *Chester* shall be holden. Certain lordships and parishes in *Wales* annexed to the county of *Flint*. Certain towns in the county of *Flint* in *Wales* assigned to be within the hundreds of *Molesdale* and *Rutland*.

34 & 35 H.VIII. c. 26.

[No. XXVIII.] 34 and 35 Henry VIII. c. 26.—An Act for certain Ordinances in the King's Dominion and Principality of *Wales* (1).

Laws specially shall be made in Wales by the officers there.

OUR Sovereign Lord the King's Majesty, of his tender zeal and affection that he beareth towards his loving and obedient subjects of his dominion, principality and country of *Wales*, for good rule and order to be from henceforth kept and maintained within the same, whereby his said subjects may grow and arise to more wealth and prosperity, hath devised and made divers sundry good and necessary ordinances, which his Majesty of his most abundant goodness, at the humble suit and petition of his said subjects of *Wales*, is pleased and contented to be enacted by the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, in manner and form as hereafter ensueth.

Wales divided into twelve shires.

II. First, That his grace's said dominion, principality and country of *Wales* be from henceforth divided into twelve shires; of the which eight have been shires of long and ancient time, that is to say, the shires of *Glamorgan*, *Caermarthen*, *Pembroke*, *Cardigan*, *Flint*, *Caernarvon*, *Anglesey* and *Merioneth*; and four of the said twelve shires be newly made and ordained to be shires, by an Act made at the Parliament holden at *Westminster* in the twenty-seventh year of our said Sovereign Lord's most noble reign, that is to say, the shires of *Radnor*, *Brecknock*, *Montgomery* and *Denbigh*, over and besides the shire of *Monmouth*, and divers other dominions, lordships and manors in the marches of *Wales*, united and annexed to the shires of *Salop*, *Hereford* and *Gloucester*, as by the said late Act more plainly appeareth.

Limitation of hundreds by commission.

III. *Item*, That the limitations of the hundreds, of late made within the said shires by virtue of his grace's commissions directed out of his Highness Court of Chancery, and again returned into the same, shall stand in full strength, force and effect, according to the said limitation; except such of the same as sith that time hath been altered or changed by virtue of any Act or Acts of Parliament already made, or that shall be altered or changed by any Act or Acts in this present session to be made.

President and council.

IV. *Item*, That there shall be and remain a president and council in

(1) Mr. Barrington observes on this Act, that it "contains a most complete code of regulations for the administration of justice, with such precision and accuracy, that no one clause of it hath ever yet occasioned a doubt or required an explanation." He adds, that "though the calendar of the Lords' journals begins with the first year of this reign, he cannot find any thing relative to this most excellent law; and that therefore the inhabitants of the principality must for ever remain ignorant of the name of their greatest patriot and benefactor." —It will be seen by note to sect. 4, that the remark as to the statute never having required an explanation is not perfectly correct.

the said dominion and principality of *Wales*, and the marches (1) of the same, with all officers, clerks and incidents to the same, in manner and form as hath been heretofore used and accustomed; which president and council shall have power and authority to hear and determine, by their wisdoms and discretions, such causes and matters as be or hereafter shall be assigned to them by the King's Majesty, as heretofore hath been accustomed and used.

Sessions of Wales twice in a year.

V. *Item*, That there shall be holden and kept sessions twice in every year, in every of the said shires in the said dominion and principality of *Wales*, that is to say, in the shires of *Glamorgan*, *Brecknock*, *Radnor*, *Carmarthen*, *Pembroke*, *Cardigan*, *Montgomery*, *Denbigh*, *Flint*, *Caernarvon*, *Merioneth* and *Anglesey*; the which sessions shall be called the King's great sessions in *Wales*.

Justice of Chester.

VI. *Item*, That the justice of *Chester* for the time being shall hold and keep sessions twice in every year, in the shires of *Denbigh*, *Flint* and *Montgomery*, and have nothing but his old fee of an hundred pounds yearly for the same.

Justice of North Wales.

VII. *Item*, That the justices of *North Wales* shall in likewise hold and keep sessions twice every year, in every of the said shires of *Caernarvon*, *Merioneth* and *Anglesey*, and shall have yearly of the King's Majesty a yearly fee of fifty pounds for the same.

Justice of Radnor, &c.

VIII. *Item*, That one person learned in the laws of this realm of *England*, by the King's Majesty to be named and appointed, shall be justice of the shires of *Radnor*, *Brecknock*, and *Glamorgan*, and shall in likewise hold and keep sessions twice in every year in every of the same shires, and shall have yearly of the King's Majesty fifty pounds for his fee.

Justice of Caermarthen.

IX. *Item*, That one other person learned in the laws of this realm, to be appointed as is aforesaid, shall be justice of the shires of *Caermarthen*, *Pembroke*, and *Cardigan*, and shall in likewise hold and keep sessions twice in every year, in every of the same shires, and shall also have yearly of the King's Majesty fifty pounds for his fee.

Patents under the Great Seal.

X. *Item*, The said persons or justices, and every of them now being, or that hereafter shall be, shall have several letters patents and commissions for their offices, under the King's Seal of *England*, to be exercised by themselves or their sufficient deputies, according to the purposes and intents in these ordinances specified.

Commissions already granted to stand in force.

XI. Provided always, That their commissions to them already granted under the said Great Seal, shall stand in force and effect according to the tenor of the same, unless it shall please the King's Majesty hereafter to alter or change them or any of them; this present article last before expressed in any wise notwithstanding.

Of what things the justices in Wales may hold plea.

XII. *Item*, That every of the said justices, within the limits of their commissions and authorities to them appointed as is aforesaid, shall hold all manner of pleas of the crown at and in the said sessions, in as large and ample manner as the King's Chief Justice in *England*, and other the King's Justices of the King's Bench there, or any of them, may do in their places, or elsewhere within the realm of *England*; and also to hold pleas of assizes, and all other pleas and actions real, personal and mixt, in as large and ample manner as the King's Chief Justice of the Common-place in *England*, and other justices of the same place, or any of them, may do in the realm of *England*.

XIII. *Item*, That every of the said justices of *Wales* shall have power and authority to enquire of all treasons, murders, felonies, riots, routs, unlawful assemblies, extortions, embraceries, maintenances, retainers,

(1) See the pieces on the jurisdiction of the marches in Bacon's law tracts. It was contended by Bacon, as solicitor general, that the term *marches* in this section extended to the counties of Hereford, Worcester, Salop and Gloucester. The contrary was maintained by serjeants Hulton and Harris. It appears by 2 Inst. p. 242, that it was held by all the judges that those counties were not within the jurisdiction of the president and council of the marches. The question has become immaterial by the abolition of that court; but the argument of Bacon deserves attention, as containing some very judicious principles respecting the general exposition of statutes.

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concealments, contempts, and all other offences and evil deeds, of what natures, names or qualities soever they be, done, committed or perpetrated within the limits of their commissions and authorities, against the form of the common law of the realm of *England*, or of any statutes of the same, and to hear and determine the premisses, and every of them, and generally to minister common justice to all and singular the King's subjects within the limits of their commissions and authorities, according to the laws, statutes and customs of the realm of *England*, and according to this present ordinance.

Sessions shall endure six days.

XIV. *Item*, That every of the said sessions shall be kept and continued by the space of six days in every of the said shires at either of the said times, as is or hath been used within the said three shires of *North Wales*; and that the said justices shall cause open proclamations to be made in the shire-towns what time and place they purpose to keep their said sessions, fifteen days at the least before they keep the same, to the intent the King's subjects may have knowledge thereof.

Days in court.

XV. *Item*, That days shall be given in all pleas, plaints, process and adjournments, from day to day and sessions to sessions, by the discretion of the said justices within the limits of their authorities, for the good and speedy ministration of justice to all and singular the King's subjects, as is or hath been used in *North Wales*.

Original seals in whose custody they shall be.

XVI. *Item*, That one original seal, devised by the King's Highness for justice to be ministered in the said three shires of *North Wales*, that is to say, the shires of *Merioneth*, *Caernarvon*, and *Anglesey*, shall be and remain in the charge, keeping and custody of the chamberlain of *North Wales*.

XVII. And that one other original seal, devised by the King's Majesty for ministration of justice, to be used in the said three shires of *Caermarthen*, *Pembroke*, and *Cardigan*, shall be and remain in the charge and keeping of the chamberlain of *South Wales*.

XVIII. And that likewise one other original seal, devised by the King's Majesty, for administration of justice, to be used in the said three shires of *Brecknock*, *Radnor*, and *Glamorgan*, shall be and remain in the charge and custody of the steward and chamberlain of *Brecknock*.

XIX. And that also one other original seal, devised by the King's Majesty for ministration of justice, to be ministered within the said shires of *Denbigh* and *Montgomery*, shall be and remain in the charge, keeping and custody of the steward and chamberlain of *Denbigh*.

XX. And that the original seal of *Chester* shall be and stand for the original seal of *Flint*, for justice to be ministered in the said shire of *Flint*, and shall be and remain in the charge, keeping and custody of the Chamberlain of *Chester*.

What shall be sealed with the original seals.

XXI. *Item*, That the said stewards and chamberlains shall seal with the said seals, that is to say, every one of them shall seal with the seal to his charge committed, all manner of original writs and process, returnable before the said justices at the sessions to be holden in every of the said shires, in manner and form as is aforesaid, and shall severally account and answer the King's Majesty for the profits of the same seal: And that none of the said stewards, chamberlains or chancellors, having the charge and keeping of the said seals, shall by occasion thereof, or by colour of any of their offices, compel or cause any person or persons inhabiting within any of the said twelve shires, to appear before themselves or their deputies, ne shall have power and authority to hear and determine any pleas of the crown, nor other causes or matters of justice, otherwise than in this ordinance is limited and expressed; but shall have the charge and keeping of the said seals, to seal all such original writs and process as shall be returnable before the said justices in their said sessions, as is before specified, and as hereafter shall be declared; which writs and process shall be used, made, sealed and returned, in manner and form as hath been used before the justice of *North Wales*.

The authority of the keepers of the seals, and to what only purposes they shall use them.

The keeper of the seals may

XXII. *Item*, That all such persons as now be or hereafter shall be the

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King's Highness stewards, chamberlains or chancellors, within any of the said twelve shires, which by reason of their said offices have charges for the receipt, collection or accompt, of and for the King's rents, revenues, farms, or profits, to be due to his Majesty within the said dominion of *Wales*, may direct process under the said seal, being in their charge and custody, within the limits of their authorities, only against bailiffs, reeves, farmers, and other ministers accomptant, to appear before themselves, to answer to and for any the King's revenues, farms, rents or profits, and for none other causes, nor against any other person or persons, in like manner and form as they have been accustomed in that case to do.

award process against accomptants, returnable before themselves.

XXIII. *Item*, That all stewards of any lordships or manors in *Wales* shall and may keep and hold such leets, lawdays or court barons, as appertaineth and belongeth to the lordships and manors whereof they be stewards, and hold pleas by plaint under the sum of *xl.s.* in every such court baron, and have and enjoy all other authorities, commodities and profits as stewards of leets, lawdays and court barons in *England* commonly have and been used to have by reason of the said offices, and none other; any law, usage, or custom in the said dominion of *Wales* heretofore had to the contrary hereof notwithstanding.

Stewards of manors may hold courts and leets.

XXIV. *Item*, Provided always, and be it enacted, That the said stewards, nor any of them, nor the sheriff of the said counties in *Wales*, shall have any power or authority to enquire of any manner of felony in any such leet, lawday or torn, within the said dominion to be holden:

Stewards or sheriffs shall not enquire of felony.

XXV. And that from henceforth no leet nor lawday be kept by the steward or other officer of any lordship or manor in the said dominion of *Wales*, but in such lordships and places, where it was accustomed to be kept before the making of the Act of Parliament concerning *Wales*, made in the twenty-sixth year of our said Sovereign Lord's reign; so always the place where such court shall be kept, be meet and convenient for that purpose.

26 H. 8. c. 6.

XXVI. *Item*, That all mayors, bailiffs and head officers of corporate towns in *Wales*, may hold pleas and determine actions, and do every other thing concerning common justice, according to their lawful grants and laudable customs of such towns; so always they follow the course, trade and fashion of the laws and customs of the realm of *England*, and not of any *Welsh* laws or customs. And that in every of the said towns they may try all issues joined, or hereafter to be joined, in any action personal, by six men, according as heretofore in divers places in the said country it hath been used; any thing contained in this Act to the contrary notwithstanding.

Officers of corporate towns may hold pleas and determine actions.

XXVII. Provided always, and be it enacted by the authority aforesaid, That forasmuch as there be divers and many small boroughs and towns corporate within the said dominion of *Wales*, whereof many have their commencement by grants made from the lords marchers, and some by other means, our said Sovereign Lord shall from henceforth, by virtue of this Act, have full power and authority, by his letters patents, to be inrolled in his Grace's High Court of Chancery, at any time within seven years hereafter next ensuing to the end of this present Parliament, to repel, annihilate and dissolve such and as many of the said boroughs and towns corporate, and all liberties and customs of the same, as to his Highness shall be thought expedient, to the intent his Majesty, at his Grace's pleasure, may duly erect, ordain and make such and as many other boroughs and towns corporate within the said dominion, being more apt and convenient for that purpose, and endue them with such liberties and franchises, as to his most excellent wisdom shall be thought necessary for the wealth of the said country.

The King may dissolve boroughs and erect others by his letters patents.

XXVIII. *Item*, The King's Majesty is pleased and contented of his most gracious goodness, that such as have patents of any office of stewardships, chamberlainships, chancellorships or justiceships, within the said dominion of *Wales*, for term of their lives, shall have and enjoy their certain, ordinary and annual fees of money, used and ac-

Officers certain fees shall continue, but not their casual fees.

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customed to be paid and born by the King's Highness, by virtue of any their letters patents, during their interest therein, but in no wise to take or claim any casual fees claimed by colour of their offices, contrary to this present ordinance; any custom in *Wales*, or any thing in this Act to the contrary notwithstanding.

There shall be four judicial seals, in whose custody they shall be, and what shall be sealed with them.

XXIX. *Item*, Over and besides the said original seals, there shall be four judicial seals devised by the King's Majesty, whereof one shall remain with the justice of *Chester*, which is appointed by this Act to be justice of the shires of *Flint*, *Denbigh* and *Montgomery*, to be used within the said shires, to seal all judicial process and bills that shall be sued before the said justice, in the sessions to be holden within the same shires: And that one other of the said judicial seals shall likewise remain and be in the charge and custody of the said justice of *North Wales*: And that the third of the said seals shall be and remain in the custody and charge of the justice of the three shires of *Glamorgan*, *Brecknock* and *Radnor*: And the fourth of the said seals shall remain in the charge and custody of the justice of the said three shires of *Pembroke*, *Caermarthen* and *Cardigan*: And the said justices shall seal with the said judicial seals, that is to say, every of them with the seal committed to his charge and custody, as well all bills, as all other judicial process, that shall be sued before them in the said sessions, upon any original bills or writs; and all other process that shall be awarded from any of the said justices shall be sealed with the said judicial seal.

Account for the profit of the seal.

XXX. *Item*, That every the said justices shall account and answer to the King's Majesty for the profits of the said seal being in his charge and custody, in manner and form as hereafter shall be declared.

Teste of every process.

XXXI. *Item*, That the *teste* of every bill and judicial process that shall pass under the said judicial seal, shall be under the name of such of the said justices from whom such bill or judicial process shall pass, in like manner and form as is used in the common place in *England*.

What process shall be sealed with the original seal.

XXXII. *Item*, That all actions real and mixt, attaints, conspiracies, assizes and *quare impedit*, appeals of murder and felony, and all actions grounded upon any statutes, shall be sued by original writs, to be obtained and sealed with the said original seal, returnable before the said justices at their sessions, within the limits of their authorities, in manner and form as is aforementioned.

Personal actions of xl.s. or above.

XXXIII. *Item*, That all manner of personal actions, as debt, detinue, trespass, accompt and such like, amounting to the sum of *xl.s.* or above, shall be sued by writs original, to be obtained and sealed as is aforesaid, or by bills, at the pleasure of the party suing the same, before the said justices within the limits of their authorities, as is used in *North Wales*.

Personal actionsunder xl.s.

XXXIV. And that all personal actions under the sum of *xl.s.* that is to say, debt, trespass, detinue, accompt and such like, shall and may be sued before any of the said justices in the said sessions, by bill, as it is used in *North Wales*.

Original bill concerning actions personal.

XXXV. And that every original bill concerning actions personal, shall be sealed with the King's judicial seal, being in the custody of the said justice before whom such personal actions by bill shall be brought and commenced.

Fees for writing and sealing of writs and bills.

XXXVI. And that such fees shall be paid for the writing and sealing of such original writs and bills as hereafter shall be expressed, that is to say, for the sealing of every original writ to be sued in and upon the causes aforesaid, and for every bill to be pursued in actions personal, whereof the debt and damage amounteth to the sum of *xl.s.* or above, the parties pursuing the same shall pay for the seal of every such writ or bill, *vi.d.* And for every judicial process to be sued upon any such original writ or bill, the parties pursuing such judicial process shall pay for the sealing thereof *vii d.* whereof the King's Majesty shall have *vi.d.* and the justice sealing such judicial process shall have *i.d.*

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XXXVII. *Item*, That every bill in personal action, whereof the debt, duty or damage amounteth not to *xl.s.* and all manner judicial process to be sued upon the same, shall also be sealed with the King's said judicial seal; and the parties pursuing the same shall pay for the seal of every such bill and judicial process thereupon to be sued, *iij.d.* whereof the King's Majesty to have *ii.d.* and the justice sealing such process to have *i.d.*

Debt or damage not amounting to xl.s.

XXXVIII. *Item*, That all writs of *scire facias*, and writs of good abearing, or for the peace, or writs of *supersedeas* upon the same, and all other process to be sued from the said justices, upon any record or suggestion admitted by any of the said justices within the limits of their authorities, shall also be sealed with the said judicial seal; and that the parties pursuing the same, shall pay for the seal of every such writ and process *vij.d.* whereof the King's Highness shall have *vj d.* and the justice by whom such process shall be sealed *i.d.*

Process sealed with the judicial seal, and the fees.

XXXIX. And that every exemplification upon any record before any of the said justices, shall be sealed with the King's said judicial seal; and the parties pursuing the same shall pay for the seal thereof *xx.d.* whereof the King's Highness shall have *xvi.d.* and the justices sealing the same *iv.d.*

XL. *Item*, That recoveries and fines of record, and warrants of attorney for the same, shall and may be taken before every of the said justices, of lands, tenements and hereditaments within his authority, by force of his general commission, without any writ of *dedimus potestatem* to be sued for the same, in like manner and form as is used to be taken before the King's Chief Justice of his common place in *England*.

Recoveries, fines, concords, &c. taken before the justices.

XLI. *Item*, That all fines hereafter to be levied before any of the said justices, with proclamation made the same sessions that the said fine shall be engrossed, and in two other great sessions then next to be holden within the same county, shall be of the same force and strength to all purposes, as fines levied with proclamations be of, that be levied before the justices of the common place in *England*.

Of what force fines levied before the justices shall be.

XLII. *Item*, That every person suing writs of entry in the *post*, or writs of covenant, or any other writs, for any recovery to be had by assent of parties, or otherwise, or for any fine to be levied, shall pay such fines to the King's use for the same, as well fines *pro licentia concordandi*, as all other manner of fines, as is used in the King's Chancery, or elsewhere in any of the King's courts of *England*, which fines shall be paid to such persons as shall seal the original writs for that purpose, and they shall account for the same in like form as they shall do for the profits of the said original seal, as is aforesaid.

Fines to the King upon recoveries or fines.

XLIII. *Item*, That the King's silver upon every fine to be levied, shall be paid as is used in the common place of *England*, that is to say, *ij. s.* which King's silver shall be paid to the justice afore whom such fine shall be levied; whereof the king's highness shall have *xx. d.* and the prenotary entering the same shall have *ij. d.* and the justice afore whom such fine shall be levied other *ij. d.* and that the same justice shall account for the King's part thereof, like as he shall for the profits of the King's judicial seal committed to his charge, in manner and form as is aforesaid.

King's silver.

XLIV. *Item*, There shall be four prenotaries for the making of all judicial process, and for the entering of all pleas, process, and matters of record, in the sessions to be holden before the said justices, whereof one of the said prenotaries shall attend upon the said justice appointed for the three shires of *North Wales*, and one other shall attend upon the justice assigned for the three shires of *Flint*, *Denbigh* and *Montgomery*; and the third shall attend upon the justice assigned for the three shires of *Caermarthen*, *Cardigan*, and *Pembroke*; and the fourth of the said prenotaries shall attend upon the justice assigned for the three shires of *Glamorgan*, *Brecknock*, and *Radnor*: And these four prenotaries, as often as their said offices shall be void, shall be named and appointed by the King's Highness, by his Majesty's letters patents under

There shall be four prenotaries, and upon whom they shall attend.

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his great seal of *England*. And where one *John Arnold*, gentleman, hath the office of prenotary and clerkship of the crown, by the King's Highness letters patents, within the said three shires of *North Wales*; and that one *John Breckenhead* hath the office of the prenotary, and clerkship of the Crown by the King's letters patents, within the said shire of *Flint*; and that likewise one *John Leonard* hath the office of the prenotary and clerkship of the Crown, by the King's letters patents, within all the residue of the said dominion of *Wales*; the King's Majesty is pleased and contented, that the said three prenotaries shall have, use, and enjoy their said offices according to the effect of the said letters patents to them thereof made, doing their duties and attendance by themselves or their sufficient deputies, at every of the said sessions to be kept within the shires whereunto they be so appointed.

A marshal and a crier, and their fees.

XLV. *Item*, There shall be a marshal and a crier in every of the said circuits and limits allotted to the said justices, which shall be named by the said justices within the limits of their authority and commission, in like manner and form as justices of assize do in *England*: And the said officers shall attend upon the said justices in their circuits in their own proper persons, and not by their deputies.

XLVI. And that the marshal have, upon every judgment and every fine, *iv. d.* and the crier *i. d.* And upon the acquittals of felons, and of them that shall be delivered by proclamation, or delivered out of common mainprise before any of the said justices, the marshal shall have *iv.d.* and the crier *i.d.*

The prenotaries' fees.

XLVII. *Item*, That every of the said prenotaries, within the limits of their offices, shall take such fees as hereafter shall be expressed; that is to say, For the writing of pleas, and engrossing of writs of entry, in the *post*, writs of right, *quod ei deforceat*, or any other writs pursued by the assent of the parties, *v.s.* and if it be with a double voucher, then *vi.s. viij.d.* and for the exemplification thereof *ij.s.* and for the engrossing of fines, to have for every fine *iij.s. iv.d.* and if it be with proclamations, then *iv.s.*

Bills of debt, detinue, trespass, &c.

XLVIII. *Item*, For every bill of debt, detinue, trespass, and all other actions personal sued before the said justices in their circuits, under the sum of *xl.s.* the prenotaries shall have for the first bill *iv.d.* for the second bill *iv.d.* and for the third bill *iv.d.* and for the entry of every declaration plea and bar, replication, and rejoinder in and upon every such action, so that he do inrol the same in parchment, *iv.d.* and for every *venire fac'*, *tales*, *habeas corpora*, and *distring'* for every of them *iv.d.* and for the judgment *viij.d.* and for every writ of execution in every such action *vj.d.* and for every warrant of attorney in every such action, as well for the plaintiffs as for the defendants, *iv.d.*

XLIX. *Item*, In all actions of detinue, trespass, and all other actions personal, wherein the duty, debt, or damage amounteth to the sum of *xl.s.* or above, which shall be sued by bills before the said justices, the prenotary shall have for the first bill, *iv.d.* for the second bill *iv.d.* and for the third *iv.d.* and for every of the declaration, the answer, replication and rejoinder, if it be enrolled in parchment *viij. d.* and for the *venire fac'*, *tales*, *habeas corpora*, *distring'*, for every of them *vi.d.* and for the judgment *viij.d.* and for the warrant of attorney, *iv.d.* and for every writ of execution upon the judgments in such bills *vj.d.*

Original writs upon actions personal.

L. *Item*, In original writs sued upon every action personal returnable before the said justices, the prenotaries shall have for every *iterum sum'*, *vi.d.* for every distress in trespass, *vj.d.* and for the declaration *viij.d.* for the answer, replication and rejoinder, for every of them, if they be inrolled as is aforesaid, *xij.d.* For the *venire fac'*, *tales*, *habeas corpora* and *distring'*, for every of them *vj.d.* and the prenotaries to have for the entry of the judgments in every such action *xij.d.* and for every writ of execution sued upon the same *vj.d.* for the exemplification of every record in any of the said actions, *ij.s.* for every warrant of attorney, *iv.d.* In all actions real and mixt, assizes, *quare impedit*, appeals of felony, murder or maim, the prenotary to have for the declaration or plaint, *ij.s.* and for the plea in bar, replication, rejoinder, surrejoinder,

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for every of them, if they be enrolled as is aforesaid, *i.s.* and for the writing of every *venire fac'*, *tales*, *habeas corp'*, and *distring'* upon the same, for every of them *vj.d.* and for the entry of the judgment, in every of the said actions and appeals, *ij.s.* and for the writing the writs of execution made upon every of the said actions, appeals and assizes, *i.s.* And for writs of *grand cape* and *petit cape*, and writs of view, writs upon voucher, and all other writs in every such action or actions *xij.d.* and for every warrant of attorney for the defendants, or for the demandants or plaintiffs, in every such action real, assize, appeal and *quare impedit*, *iv.d.* and for the essoins in every such action *iv. d.* and for the adjournment *ij.d.* and for the bail of every person of felony *xij.d.* and for the bail for trespass *vj.d.* and for the appearance and bailing of common mainprise *ij.d.*

Writs of the peace and good abearing.

LI. *Item*, For writing writs for the peace and good abearing, granted by any of the said justices in their sessions, *vj.d.* and for the entering of every recognizance to be had and taken before the said justices, for every cause or causes, other than before is expressed, *xij.d.* and if it be with condition, then *ij.s.* and upon every acquittal and deliverance of felons or murderers, by verdict or by allowance of pardon, the prenotaries to have *ij.s.* and if it be upon indictments certified from the justices of the peace, afore the justices in the great sessions, the clerk of the peace to have also *xii.d.* and upon the delivery of any suspect of felony or murder by proclamation, the said prenotary to have *xij.d.*

The King shall have fines, issues, amerciaments.

LII. *Item*, That the King's Majesty shall have all fines, issues, amerciaments, and all forfeitures of recognizances, lost or forfeited before any of the said justices in the session aforesaid; and that the said prenotaries, within the limits of their offices, shall yearly estreat the same into the Exchequer appointed for that limit, to the intent that process from thence may be awarded to the sheriffs to levy the same to the King's use, as appertaineth, which sheriffs shall yearly make their accompts before the King's auditors thereunto to be assigned and appointed.

Justices of peace altered by 5 & 6 W. & M. c. 4.

LIII. *Item*, Over and besides the said president and council and justices, there shall be justices of peace and *quorum*, and also one *custos rotulorum*, in every of the said twelve shires.

LIV. *Item*, That the said justices of peace, justices of *quorum* and *custos rotulorum*, in the said shires, shall be named and appointed by the chancellor of *England*, by commission under the King's great seal of *England*, by the advice of the president, council and justices aforesaid, or three of them, of the which the said president to be one, from time to time as the case shall require.

LV. *Item*, That there shall not exceed the number of eight justices of the peace in any of the said shires, over and besides the president, council, and justices aforesaid, and the King's attorney and solicitor shall be put in every commission of peace in every of the said twelve shires.

The justices of peace, their oath.

LVI. *Item*, That such persons as shall be named to be justices of peace within every of the said shires shall be of good name and fame; and after they be assigned by commission, may use and exercise the office of justice of the peace, albeit they may not dispend twenty pound, nor be learned in the laws of the lands, without any loss, damage, or penalties for insufficiency of their lands: And that every of the said justices of peace, before they shall execute their commission, shall take their oaths before the Chancellor of *England*, or else before the said president, or one of the said justices in *Wales*, by virtue of the King's writ of *dedimus potestatem*, or before any other person to be limited by the Lord Chancellor of *England* for that purpose, the contents of which oath shall be after the form as justices of peace in *England* use to make.

The justices sessions, authority and fees.

LVII. *Item*, That the said justices of peace, or two of them at the least, whereof one to be of the *quorum*, shall and may keep their sessions, within the limits of their commissions, four times in the year, and at other times upon urgent causes, as justices of peace in *England* use to

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do; and shall have like power and authority in all things and fees of the King's Majesty for the time of their sitting, as well for themselves as for their clerks, and shall be bound to use and do their offices, in like manner as is used in *England*.

The fees of the justices and clerk of the peace.

LVIII. *Item*, That no justices of peace, clerk of the peace, nor other clerk of any justice of peace in *Wales*, shall take for the writing of any warrant of the peace, or good abearing, above *vj.d.* and for entering of pledges or boroughs to pay the King's fine upon any indictment, *ix.d.* and if it be with protestation, then to take *xij.d.* and for a *supersedeas* not above *viij.d.* and for a recognizance *xij.d.* And that all the said justices of peace shall certify all recognizances taken before any of them for the peace or good abearing, into their sessions next to be holden after the taking thereof: and recognizance taken before any of them, for suspicions of any manner of felony, shall be certified before the justices of the great sessions next to be holden after the taking thereof, without concealment, detaining, or imbezzling of he same, upon such penalties and damages as be therefore ordained and established.

Certificate of recognizances.

Taxing of fines and amerciaments.

LIX. *Item*, That all fines and amerciaments before the said justices of peace lost, and hereafter to be lost, shall be taxed and afferred by two justices of the peace at the least, whereof one to be of the *quorum*, and that all such fines and amerciaments shall be set truly and duly, according to the quantity of the offences, without partiality or affection.

Fines, forfeitures and amerciaments to be estreated.

LX. *Item*, That the said fines and amerciaments, and also all issues lost before the said justices of peace, and all forfeitures of recognizances, and other forfeitures before the same justices, shall be yearly estreated by the clerks of the peace into the Exchequer appointed for that limit, to the intent that process from thence may be awarded for the levying of the same forfeitures and sums of money to the King's use, to the sheriff of every county as shall appertain, who shall make thereof their accompts before such auditors as thereunto shall be assigned, so that the King's Majesty may thereof be truly and duly answered and satisfied: which auditors shall make due allowance to the same sheriffs for the fees of the justices and clerks of the peace, upon their said accompts, as is used in the realm of *England*.

Allowance from auditors.

Sheriffs in every shire of Wales and how they shall be nominated.

LXI. *Item*, That there shall be sheriffs in every of the said shires yearly appointed by the King's Majesty; and that none of the said sheriffs shall have their said office of sheriffwick any longer time than is used by the laws and statutes of *England*. And for the yearly nomination of the said sheriffs, the said lord president, council and justices of *Wales*, or three of them at the least, whereof the said president to be one, shall yearly nominate three substantial persons in every of the said twelve shires, to be sheriffs of the same, and shall certify their names to the lords of the King's most honourable council, attending upon his grace's person, *crastino animarum*, to the intent the King's Majesty, being thereof advertised, may appoint one of them in every of the said shires to be sheriff for that year, at his most gracious will and pleasure, like as his highness doth for this realm of *England*; and thereupon the said sheriffs shall have their patents and commissions under the great seal of *England*, as sheriffs of *England* have, and shall make and take oaths and knowledges of recognizances before the president and justices, or one of them, by virtue of the King's writ of *dedimus potestatem* to be directed for the same, for the due execution of their offices, and for their just and true accounts before the King's auditor or auditors assigned for *Wales*.

The sheriff's authority and duty in Wales.

LXII. *Item*, That every of the said sheriffs shall have full power and authority, within the limits of their sheriffwick, to do and use their offices as sheriffs in *England*, and shall accomplish and execute, without any favour, dread or corruption, all manner of writs, process, judgments and executions, and all manner common justice appertaining to their offices of sheriffs, and all lawful commandments and precepts of the said president, council and justices of *Wales*, and also of the justices of the peace, escheators, and coroners, and every of them, in all things appertaining to their offices and authorities.

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LXIII. *Item*, That the said sheriffs shall do, and be bound to do, all and every other thing and things for the ministration of justice, and for the conservation of the King's peace, and the apprehension and repress of traitors, murderers, thieves, felons and other offenders, as sheriffs of *England* do use and be bound to do within the realm of *England*.

The sheriffs duty in administration of justice.

LXIV. *Item*, That the said sheriffs shall yearly accompt before such the King's auditor or auditors as shall be assigned and appointed by the King's Majesty for his said dominion of *Wales*; and that every of the said sheriffs shall have yearly for his fee *v.l.*

Enforced by 3 Geo. I. c. 15. s. 22.

LXV. *Item*, That all mayors, sheriffs, stewards, bailiffs, and other ministers and officers of justice of every county, lordship, town and place within the said dominion of *Wales*, and all and singular the King's subjects of the same shall be always obedient, attendant and assisting to the said president, council and justices of *Wales*, and every of them, and shall obey the King's commandments and process from them or any of them directed, and all the lawful and reasonable precepts of the said president, council and justices, and every of them, and also shall be obedient to all the said justices of peace, sheriffs and escheators, within the limits of their said authorities, as well for common administration and due execution of justice, as in all other things appertaining to their duties and offices.

All officers and other persons shall be attendant on the president, &c.

LXVI. *Item*, That escheators shall be named in every of the said shires by the Lord Treasurer of *England*, by the advice of the said president, council and justices, or three of them at the least, whereof the said president to be one; which escheators shall make and take their oaths, and knowledge their recognizances, before the said president, or one of the said justices, by virtue of the King's writ of *dedimus potestatem* to be directed for the same, for the due execution of their offices, and for their true accompt to be made before the King's auditor or auditors to be assigned for the same; which oath and recognizance shall be agreeable to the oath and recognizance used for the escheators in *England*; and the escheators shall yearly have their patents and commissions under the great seal of *England*, and shall have power and authority to exercise their offices in like manner and form as escheators in *England*, and shall be bound to all laws and statutes of *England*.

Escheators shall be named in every shire in Wales.

LXVII. *Item*, That all such persons as shall be appointed to the said offices, shall and may exercise their offices, if they may dispend yearly *v.l.* of freehold, any statutes of *England* to the contrary thereof notwithstanding; and that every of the said escheators shall make their accompts yearly before such auditor or auditors as shall be assigned by the King's Majesty to hear and determine his highness' accompt for his revenues and profits of the said dominion of *Wales*.

What freehold an escheator in Wales must have.

LXVIII. *Item*, There shall be two coroners to be elected in every of the said twelve shires, as is used in *England*, by virtue of the King's writ *de coronatore eligendo*, to be awarded out of the King's Chancery of *England*; and that the said coroners shall have like power and authority to do and exercise their offices, and have like fees, as is limited by the laws and statutes of *England*.

Two coroners in every shire in Wales.

LXIX. Provided always, That the writ *de coronatore eligendo*, to choose the coroners within the said county of *Flint*, shall be directed out of the Exchequer of *Chester*.

LXX. *Item*, That the said justices of the peace, or two of them at the least, whereof one of them to be of the *quorum*, shall appoint and name, in every hundred within the limits of their commission, two substantial gentlemen or yeomen, to be the chief constables of the hundred wherein they inhabit; which two constables of every hundred shall have a special regard to the conservation of the King's peace, and shall and may do and use their offices in all and singular things, as is used by the high constables of the hundreds in *England*, and shall be bound to all things as the high constables of the hundreds in *England* be bound to do.

Two constables of the hundred.

LXXI. *Item*, That every of the said sheriffs shall have a gaol for pri-

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soners within some convenient place of the castles of the shire-towns where he is sheriff, or in such other convenient place, as by the said president, council and justices, or three of them, whereof the said president to be one, shall be appointed: any patent or grant heretofore made to any person or persons of the constableship or keeping of any of the said castles in any wise notwithstanding. And that the sheriff shall make the bailiffs of the hundreds, and they to attend upon the justices in every of their courts and sessions.

A gaol to be provided by the sheriffs and bailiffs of the hundred.

LXXII. Provided always, That the constables of the King's castles within every of the said shire-towns of *Wales* shall not be charged with the gaols, and of all the prisoners that shall be committed to their ward, like as they have heretofore been, until such time, convenient places for that purpose be assigned to the said sheriff.

County courts, hundredcourts.

LXXIII. *Item*, The said sheriffs shall keep their counties monthly, and their hundred courts for pleas under *xl.s.* as is used in *England*; and shall take for the entering of plaints, process, pleas and judgments in the said shire-courts and hundreds, such small fees as is used to be taken in shires and hundreds in *England*, and not above.

Trial by wager of law of six men.

LXXIV. *Item*, That all manner of trials before them in their said courts, or before any stewards in court barons, shall be by wager of law, or verdict of six men, at the pleasure of the party plaintiff or defendant that pleaded the plea.

Sheriffs' torns.

LXXV. And that every of the said sheriffs shall keep and hold their torns yearly after *Easter* and *Michaelmas*, as they have been used in *England*.

Fines forfeit in torns, &c.

LXXVI. *Item*, The King's highness shall have all manner of fines, issues, amerciaments, and forfeitures lost or forfeited in any of the said counties, hundreds, courts, and torns, to his own use, and the sheriff to account for the same accordingly.

The estreats afferred by the justices of assize.

LXXVII. *Item*, That the estreats of the said torns, counties and hundreds shall be viewed, and the fines issues and amerciaments afferred by the said justices of assizes of that circuit, before the levying of the same amerciaments or other forfeitures; and that no sheriff, or any of his officers, presume to gather or levy any such amerciament, or other forfeiture, before the said estreat be so afferred, upon painto forfeit to the King's use *xl.s.* And that the sheriff upon every judgment had before him in his county or hundred court, in any plaint under *xl.s.* shall and may award a *capias ad satisfaciendum*, to arrest the party condemned, or else a *fieri fac*' at the liberty of the party pursuant.

The sheriff may award execution.

Sheriff's fees for executing several writs.

LXXVIII. *Item*, That all bills sued before the said justices in personal actions, whereof the debt, duty or damage is under *xl.s* the sheriffs shall have for the return of every bill *ij.d.* and every *venire fac*', *tales*, *habeas corp*', and *distr*' *ij.d.* and for writs of execution upon the judgment in any such bill, *viij.d.*

Bills sued before the justices.

LXXIX. *Item*, In bills sued before the said justices in actions personal above the sum of *xl.s.* the sheriff shall have, for the return of every such bill *iv.d.* and for the return of every *venire fac*', *habeas corp*', *distr*' and *tales*, *iv.d.* and for every writ of execution *ij.s.* And in all personal actions sued by original writs returnable before the said justices, the sheriff shall have for every *iterum sum*' *distr*' and *alias distr*', *iv.d.* and for every *venire fac*', *habeas corp*', *distr*' and *tales*, *vj.d.* and for every writ of execution to be executed upon the judgment in such actions, *ij.s.* For the serving of every writ of *elegit*, *vj.s. viij.d.* And in all real actions, or mixt, pursued before the said justices by original writ, for return of every original, *ij.s.* and for the return of every other writ and judicial process depending upon the same, before judgment, *ij.s.* and for every writ of execution after judgment, upon every original, in actions real or mixt, *ij.s.* and for the serving of every writ of *haberi fac*' *seisinam*, *vi.s. viij.d.*

Attachments or other process sued by original, &c.

LXXX. *Item*, For attachments upon *capias*, or other process sued before the said justices by original or judicial writ, if the return *cepi corpus*, *ij. s.* and for a *reddit se*, upon an exigent of felony, in appeal of murder or maim, or upon any indictment of felony or murder, *ij. s.* and

upon a *reddit se*, upon an exigent of debt, trespass, detinue, and all other actions personal *i. s.* and for the making of *replegiar' i. s.* and *withernam* upon the same *i. s.* For the return of every writ of appeal of murder or felony, or maim, *i. s.* and upon all other process grown upon the same, as *venire fac'*, *tales*, *habeas corp'* and *distr'*, *i. s.* and in every action taken before the sheriff by *justicies*, for the summons thereof, *iv. d.* and for every other process thereupon, *iv. d.* and for every prisoner delivered by acquittal, or by proclamation, for any manner of felony, *i. s.*

Suspect persons may be put under common mainprize.

LXXXI, *Item*, That every sheriff, within the limits of his authority, may and shall put such persons under common mainprize, as they have reasonable cause of suspect, according to the said Act made for *Wales*, binding such as they shall so put to common mainprize with two sufficient sureties with them, by recognizance, to appear before the said justices within the limits of their authorities, at the next great sessions, to be holden next after the taking of such bonds, and shall certify the names of them that be bound, before the said justices at the said sessions accordingly, without concealment thereof, at their pleasure.

Sheriffs fees for common mainprize, and serving of writs.

LXXXII. *Item*, That every person that the sheriff taketh to common mainprize, to appear before the said justices as is aforesaid, shall pay for his mainprize *ij. d.* and not above; and the said sheriffs to put no man to common mainprize but such as be suspect, and as shall be returned by them before the said justices at their sessions as is aforesaid. And also the said sheriff shall have, for the return of a writ of false judgment, out of a base court, before the said justices, *ij. s.* and that the said sheriffs shall take no manner of fees for the return of any of the said writs of execution afore expressed, unless he return the same executed.

Fees shall be rated, augmented and diminished by the president, council and justices.

LXXXIII. *Item*, That in all and every such writs, original or judicial, or other process, pleas or writings, which be not expressed in this ordinance, the fees thereof, as well for the seals as writing, shall be rated by the said president, council and justices, or three of them, whereof the said president to be one, by their discretions from time to time, as the case shall require; and that they shall have full power and authority from time to time to assess and appoint what fee the said sheriffs, escheators and coroners, and their ministers, prenotaries and their clerks, and other ministers of justice in the said shires, shall have, take and receive of the King's subjects, for any manner writs, plaints, pleas, process, returns, or any other matter or thing concerning or belonging to the execution of their offices and rooms, and to augment or diminish any fee or fees above declared, as shall be thought by their discretions to be convenient and meet for the commonwealth of the King's subjects of those parts of *Wales*; any thing contained in this Act to the contrary thereof notwithstanding.

No felon put to his fine, but may be reprieved.

LXXXIV. *Item*, That from henceforth no manner of person or persons, for murder or for felony, shall be put to his fine, but suffer according to the laws of the realm of *England*, except it please the King's Majesty to pardon him or them; and if the said justices see cause of pity, or other consideration, they may reprieve the prisoner till they have advertised the King's Majesty of the matter.

A confirmation of 26 H. 8. c. 6. concerning inquiry of offences done in Wales in the counties next adjoining.

LXXXV. *Item*, That the Act made in the Parliament holden in the twenty-sixth year of the most royal reign of the King's Majesty, concerning (among other things) inquisitions and trials of counterfeiting, washing, clipping and minishing of the King's coin, murders, felons and accessaries to the same, perpetrated or done within *Wales*, to be had, made and determined in the next shire or county within *England* adjoining, where the King's writ runneth, and every article therein contained, shall stand in his full strength and force, according to the tenor and effect of the same; any thing in this said ordinance, or any other Act, cause or matter heretofore had or made to the contrary thereof notwithstanding.

'LXXXVI. And albeit the same Act as yet was never put in exe-
'cution for any of the said offences heretofore done or committed
'within any of the said three shires of *North Wales*; that is to say, the
'counties of *Anglesey*, *Caernarvon*, and *Merioneth*,' be it now declared

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and enacted by the authority aforesaid, That the said Act, and every article therein contained, shall from henceforth take effect, and be executed in all points for and concerning any of the said offences perpetrated and done, or that hereafter shall be perpetrated or done, within the said county of *Merioneth*, to be enquired of, heard and determined within the county of *Salop*, in like manner and form as commonly is and hath been used for any of the same or like offences committed or done within any other county of *South Wales*; any matter or cause heretofore risen or grown to the contrary thereof notwithstanding.

Abertannad annexed to Salop, and within the hundred of Oswestre.

LXXXVII. *Item*, That the town or hamlet of *Abertannad*, and all the grounds and the soil within the same, which afore this time hath been taken, reputed and used as parcel of the said county of *Merioneth*, shall from the feast of *Easter* next coming, by virtue of this Act, be united, annexed and made parcel of the said county of *Salop*; and so from thenceforth to be reputed, taken and used for ever, and not to be of any other shire or county of *Wales*; and that the same town or hamlet, and all the ground and soil within the same town or hamlet, be from and after the said feast accepted and taken as part and parcel of the hundred of *Oswestre*; and that the inhabitants thereof from the said feast shall be attendant, and do every thing and things with the inhabitants of the said hundred of *Oswestre*, as the same inhabitants do or be bound to do; any laws or customs to the contrary thereof notwithstanding.

Foreign plea of voucher triable in any other shire in Wales or England.

LXXXVIII. *Item*, In case any foreign plea or voucher be hereafter pleaded or made before any of the said justices of *Wales*, between party and party, triable in any other shire within *Wales*, than where the same plea is pleaded or voucher made; that then the said justices, afore whom the same plea or voucher is or shall be pleaded or made, shall and may send the King's writ, with a transcript of the record mentioning the same foreign matter of plea or voucher, under the seal to him committed, unto the justice of the county where the same matter is or shall be triable, commanding the said justice, by virtue of the said writ, to proceed to the trial thereof according to the King's laws and statutes; which trial so before him had, he shall remand with the whole record unto the justice before whom the said plea or voucher was pleaded or made, who thereupon shall proceed to judgment, as the case shall require.

LXXXIX. *Item*, In case the same foreign plea, voucher or other matter so pleaded, be triable within this realm of *England*, that then in every such case the justice, afore whom the same plea or voucher is or shall be pleaded, had or made, shall and may proceed to the trial thereof, as shall appertain, within the same shire of *Wales*, where the same plea, voucher or matter was pleaded; the said foreign plea, voucher, or any other thing or matter to the contrary thereof notwithstanding.

No rumours, tumults, unlawful assemblies or outcries shall be in Wales.

XC. *Item*, That no manner of person or persons from henceforth, without lawful authority, shall make any rumours, tumults, unlawful assemblies or outcries at any of the said courts or sessions, nor any outcries and unlawful assemblies in great numbers at any other time or times, except it be for the apprehension or pursuing of murtherers or felons; upon pain of imprisonment and grievous fine to be taxed and set upon them by the said president and council, or by the justices or other officer before whom such misdemeanor shall happen to be committed.

All lands in Wales shall be English tenure, and not partable.

XCI. *Item*, That all manors, lands, tenements, messuages and other hereditaments, and all rights and titles to the same, in any of the said shires of *Wales*, descended to any manner person or persons sith the feast of the nativity of St. *John Baptist* in the thirty-third year of our said Sovereign Lord's reign, or that hereafter shall descend, be taken, enjoyed, used, and holden as *English* tenure, to all intents, according to the common laws of this realm of *England*, and not to be partable among heirs males, after the custom of *Gavelkind*, as heretofore in divers parts of *Wales* hath been used and accustomed. And that the same law, from and after the said feast of St. *John Baptist*, in the said thirty-third year, be used, taken, and exercised in the said county of *Monmouth*, and in all such lordships and other places as by virtue of the

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said Act made in the said twenty-seventh year, or by any other Act or Acts made or to be made, were and shall be annexed, united, or knit to any of the shires of *Salop*, *Hereford*, *Gloucester*, or other shire; any laws, usages, or customs heretofore had or used to the contrary thereof notwithstanding. • 27 H. 8. c. 26.

Mortgages of lands in Wales.

XCII. *Item*, That no mortgages of lands, tenements, or hereditaments made or had after the said feast of St. *John Baptist*, which was in the said thirty-third year of the reign of our said Sovereign Lord, or that hereafter shall be had or made within any of the said shires or places, shall be hereafter allowed or admitted, otherwise than after the course of the common laws or statutes of the realm of *England*; any usage or custom heretofore had to the contrary thereof notwithstanding.

All persons may sell their lands, or demise them after the manner of England.

XCIII. *Item*, It shall be lawful to all persons to alienc, sell, or otherwise put away their lands, tenements, and hereditaments within the said country or dominion of *Wales*, the county of *Monmouth*, and other places annexed to any of the shires of *England*, from them and their heirs, to any person or persons in fee-simple or fee-tail, for term of life, or for term of years, after the manner and according as is used by the laws of the realm of *England*; any *Welsh* law or custom heretofore used in the said country or dominion of *Wales* to the contrary thereof notwithstanding. This article to take effect from and after the said feast of the nativity of St. *John Baptist*, which was in the said thirty-third year of our said Sovereign Lord's reign.

Persons having lands in Wales bound by statute in England.

XCIV. *Item*, If any person or persons having lands or tenements within the said dominion of *Wales*, been or hereafter shall be bound within the realm of *England*, by obligation upon the statute of the staple, or by recognizance, and pay not the debt as shall appertain, that then upon certificate thereof made unto the King's Chancery of *England*, by the clerk of the staple, or by any justice of record before whom such recognizance shall be knowledged, process shall be made to the sheriffs of *Wales* out of the Chancery of *England* after the form as is used to be made upon statutes and recognizances, by the course of the laws of *England*, for the due levying and paying of the said debt.

Recognizances taken in the King's Bench or Common-place.

XCV. Provided always, and be it enacted by the authority aforesaid, That for such recognizances as be or hereafter shall be taken and knowledged before the King's justices of his Highness bench or common-place in *England*, process shall be had and pursued immediately out from the said justices, as is used upon recognizances taken before the said justices by the common course of the laws of *England*.

Writs, bills, plaints, &c.

XCVI. *Item*, That all such writs, bills, plaints, pleas, process, challenges and trials shall be used throughout all the shires aforesaid, before the said justices in their sessions, as is used in *North Wales*, or as shall be devised by the said president, council and justices, or three of them, whereof the said president to be one, for the good ministration of justice to be had in every of the said shires.

33 H. 8. c. 13.

'XCVII. *Item*, Where the lordship of *Hope*, with divers other lordships, parishes, towns and hamlets, were by an Act of Parliament made in the thirty-third year of the reign of our said Sovereign Lord appointed and translated from the said county of *Denbigh* to the county of *Flint*, and by the same Act were made part, parcel, and members of the same county of *Flint*, afore which appointment or translation divers indictments and presentments, as well of felony as other offences, were had and taken for the King's Highness, before the justice of the said county of *Denbigh*, in the great sessions there, and some before the justices of the peace within the same county, for offences supposed to be done within divers of the said lordships so translated, and also divers judgments given at the suit of the parties before the said justices; and some before the sheriff of the said county of *Denbigh*, for matters risen and grown within the precinct of the said lordships or other places, before the translation of the same:' It is now ordained and enacted, that all the said indictments and presentments shall be heard, tried and determined within the said county of *Denbigh*, by persons as well of the said lordship or place where the said offences were

Indictments or presentments made for suits depending in lordships that

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were removed from one county to another.

done or committed, as of other place or places within the said county of *Denbigh*, in manner and form, as though the said translations had never been had ne made: And also that the said judgments as before given or had between party and parties, before any justice of record or other officer within the said county of *Denbigh*, for any matter or cause, appearing by the record of the same to be grown and risen within any of the said lordships, parishes, towns, or hamlets so translated, shall and may be executed by the sheriff of the said county of *Denbigh* within any of the same lordships, or other place so translated; the said translation, or any other cause or matter to the contrary thereof notwithstanding.

XCVIII. *Item*, Like law and order to be kept and ministered upon all other like translations of any other lordships, manors, towns, parishes, and other places within *Wales*, had, made, or done in this present Parliament, or any other afore or after the same translations, or any other cause or matter to the contrary thereof notwithstanding.

Suits tried at a petty sessions.

XCIX. *Item*, Where there shall be divers and many suits taken before the said justices in pleas personal, which (as it is thought) cannot be tried before them in the time of the said great sessions, for brevity of time: Therefore, and for the speedy trial of these matters, the issues taken in the said suits shall and may be tried at a petty sessions, before the deputy justices there, as is and hath been used in the said three shires of *North Wales*; except such of the said suits, as by the discretion of the said justices shall be thought necessary to be tried before themselves, within their limits; and that there shall be no suit taken before any of the said justices by bill, under the sum of twenty shillings.

No suit by bill under xxs.

No agreement shall be made with a felon without consent of the president, &c.

C. *Item*, If any murder or felony hereafter be committed or done within *Wales*, that then the party or parties to whom any such offence shall hap to be committed, shall in no wise make any end or agreement with the offenders in that behalf, nor with any other in his name or behalf, unless the said party first make the said president and council, or one of the said justices, privy unto the same, upon pain of imprisonment, and grievous fine to be set and adjudged at the discretion of the said president, council and justices, or two of them, whereof the said president to be one; the same pain and penalty to extend as well to and against such as shall labour, move, or procure any such end or agreement made, although the same labour, motion, or procurement never take effect, to make any end or agreement, as against him or them with whom such end or agreement shall be made, if the same happen to take effect.

32 H. 8. c. 20.

Franchises of lordships in Wales, and the marches of the same.

27 H. 8. c. 26.

CI. *Item*, Where divers lordships marchers, as well in *Wales*, as in 'the borders of the same, now being by Act of Parliament annexed to 'divers shires of *England*, be lately come to the King's hands by sup-'pression of houses, by purchase or attainders, and now be under the 'survey of the court of augmentations, or of the King's general sur-'veyors, the liberties, franchises, and customs of all which lordships be 'lately revived by Act of Parliament made in the thirty-second year of 'his most gracious reign;' nevertheless his Majesty willeth and commandeth, that no other liberties, franchises, or customs shall from henceforth be used, claimed, or exercised within the said lordships, nor any other lordships within *Wales*, or the county of *Monmouth*, whosoever be lord or owner of the same, but only such liberties, franchises and customs, as be given and commanded to the lords of the same lordships, by force and virtue of the said Act of Parliament made for *Wales*, in the said twenty-seventh year of his grace's reign, and not altered ne taken away by this ordinance; the said Act made in the said thirty-second year, or any other Act, grant, law, or custom to the contrary thereof notwithstanding.

Peaceable possession of lands five years.

CII. *Item*, That if any person or persons, their ancestors, or they whose estate the same person or persons have or hath, in peaceable possession of any lands or tenements in *Wales*, by the space of five years, without let, interruption, or lawful claim: That then the same person or persons shall still continue their possession, until such time as it shall be law-

fully recovered against them by the order of the King's laws, or by decree of the president and council there.

Jury de circumstantibus.

CIII. *Item*, In actions personal, taken and pursued before the said justices in *Wales*, by original writ or bill, if nine of the jury be sworn to try the issue between the party plaintiff and the defendant, and the residue of the said jury make default, or be tried out: Then the sheriffs shall and may immediately return other names in the said jury, *de circumstantibus*, unto such time there be twelve men sworn to try the issue between them, as before the justices of *North Wales* hath been afore used and accustomed in such cases.

No sale of stolen goods shall change the property.

CIV. *Item*, That if any goods or chattels be stolen by any person or persons, and sold in any fair or market within the said dominion of *Wales*, that no such sale shall change the property thereof from the owner of the same, but that he may lawfully seize, take and have the same again, upon proof thereof made, the said sale notwithstanding.

None shall buy cattle out of the market.

CV. *Item*, That no person or persons bargain or buy any manner of beast or other quick cattle in any place within *Wales*, out of the market or fair, unless he can bring forth sufficient and credible witness of the name of the person, what place and time he bought the same, upon pain and danger of such punishment and fine as shall be set upon him by the said president and council, or any of the said justices in his circuit, for the said offence, and as he will therefore answer at his further peril.

Following of stolen goods.

CVI. *Item*, If any goods or chattels be stolen within the limits of any of the said shires in *Wales*, that then upon suit thereof had and made, the track shall be followed from township to township, or lordship to lordship, according to the laws and customs in that behalf heretofore used in *Wales*, upon such penalty and danger as heretofore hath been accustomed.

A freeholder may pass in any jury.

CVII. *Item*, That every person that hath any lands or tenements in fee-simple or fee-tail, or for term of life, or for term of any other man's life, being freehold, shall and may pass in all manner juries and trials, as well in case of felony or murder, as in all actions real, personal and mixt, whatsoever they be, attaint only except; and also may be impanelled, and inquire of all concealments, forcible entries, and other causes of inquiry for the King's Majesty, albeit he may not dispend forty shillings by the year; saving to every man his lawful challenge for any other cause, according to the laws of this realm of *England*.

Juror in attaint.

CVIII. *Item*, That no juror shall pass in attaint, unless he may dispend forty shillings by the year of estate of freehold.

Tallage at the change of lords.

CIX. *Item*, The tenants and resiants in *Wales* shall pay their tallage at the change of their lords in such places, and after such form as hath been heretofore accustomed in *Wales*.

Knights for shires, burgesses.

CX. *Item*, That all the King's subjects and resiants in *Wales* shall find, at all Parliaments hereafter to be holden in *England*, knights for the shires, and citizens and burgesses for cities and towns, to be named and chosen by authority of the King's writ under the great seal of *England*, according to the Act in that case provided, and shall be charged and chargeable to all subsidies and other charges to be granted by the Commons of any of the said Parliaments, and pay all other their rents, farms, customs and duties to the King's Highness, as they have been accustomed heretofore; fines for redemption of sessions only excepted, which the King's Majesty of his most gracious goodness and liberality is contented and pleased to remit, at the humble suit of his said loving subjects of his said dominion of *Wales*.

27 H. 8. c. 26. Subsidies and charges.

Fines for redemption of sessions remitted.

Haverford a burgess.

CXI. *Item*, That the town of *Haverfordwest* shall after the end of this present Parliament for ever find one burgess for the said town, at every Parliament after that time to be holden: And the charges of the same burgess to be always born by the mayor, burgesses and inhabitants of the said town, and none other.

Felons goods, waifs, strays.

CXII. *Item*, That the King's Majesty shall have all felons goods, and goods of persons outlawed, waifs, strays, and all other forfeitures and escheats whatsoever they be, answered thereof by the hands of the sheriffs,

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saving always the rights and interests of every of his subjects having lawful title to have the same.

In what courts errors in Wales shall be redressed.

CXIII. *Item*, That all errors and judgments before any of the said justices at any time of the great sessions, in pleas real or mixt, shall be redressed by writ of error, to be sued out of the King's Chancery of *England*, returnable before the King's justices of his bench in *England*, as other writs of error be in *England*. And that all errors in pleas personal shall be reformed by bills to be sued before the said president and council of *Wales*, from time to time, as the party grieved will sue for the same. And if in case the judgment be affirmed good in any of the said writs of error or bills, then there to make execution, and all other process thereupon, as is used in the King's Bench of *England*: And that the pursuants in every such writ of error or bill do pay like fees therefore as is used in *England*.

False judgment.

CXIV. *Item*, That no execution of any judgment given or to be given in any base court be stayed or deferred by reason of any writ of false judgment, but that execution shall and may be had and made at all times before the reversal of the said judgment, the pursuit of the said writ notwithstanding. And in case the said judgment happen after to be reversed, then the party pursuant to be restored to all that he hath lost by the said judgment, according to the laws of the realm of *England*.

Process for weighty causes.

CXV. *Item*, That all process for urgent and weighty causes shall be made and directed into *Wales*, by the special commandment of the Chancellor of *England* for the time being, or any of the King's council in *England*, as heretofore hath been used; any thing in this Act to the contrary thereof notwithstanding.

Bewdley shall be within the county of Worcester.

CXVI. *Item*, That the town of *Bewdley*, which is within the parish of *Ribbesford* in the county of *Wigorn*, and all the ground and soil of the same town, shall from henceforth be united, annexed and made parcel of the county of *Wigorn*, and to be within the hundred of *Dodingtre*. And that all the inhabitants of the said town and parish shall from henceforth be attendant, and do every thing and things with the inhabitants of the said hundred, as the same inhabitants be now bound to do by the laws of this realm of *England*. Saving always to the burgesses and inhabitants of the said town of *Bewdley* all such liberties and franchises as they lawfully had and exercised within the said town before the making of this Act, in like manner and form as though this Act had never been had nor made.

Llanstiffan, Langham and Usterloys shall be within the county of Caermarthen.

CXVII. *Item*, That the lordship of *Llanstiffan*, *Usterloys* and *Langham*, and the members of the same, and all manors, lands, tenements, and other hereditaments in the same lordship, and the members of the same, be from henceforth united, annexed, joined, named, accepted and taken as part and parcel of the county of *Caermarthen*, and reputed, joined, united, named, accepted and taken as part and parcel of the hundred of *Derles*, in the said county of *Caermarthen*. And that the tenants and inhabitants of the said lordships and members be attendant, and do every thing and things with the tenants and inhabitants of the said hundred of *Derles*, as the said inhabitants now be bound to do, according to the laws there used.

CXVIII. *Item*, That the county or shire court of the county of *Radnor* shall from henceforth be holden one time at *New Radnor*, and one other time at *Preston*, *alternis vicibus* and never from henceforth to be kept or holden at *Rather Gowey*; any former Act or thing to the contrary thereof notwithstanding.

The King may add and alter laws and ordinances.

This branch is repealed 21 Jac. 1. c. 10. § 4.

CXIX. *Item*, It is further enacted by the authority aforesaid, That the King's most royal Majesty shall and may, at all times hereafter, from time to time, change, add, alter, order, minish, and reform all manner of things afore rehearsed, as to his most excellent wisdom and discretion shall be thought convenient; and also to make laws and ordinances for the common wealth and good quiet of his said dominion of *Wales* and his subjects of the same, from time to time, at his Majesty's pleasure; any thing contained in this Act, or in the said Act made for the said shire

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ground of *Wales*, or any other Act or Acts, thing or things, to the contrary thereof heretofore made in any wise notwithstanding.

CXX. And that all such alterations of the premisses, or any part thereof, and all such laws and ordinances to be hereafter made, devised and published by authority of this Act, by the King's Majesty, in writing under his Highness great seal, shall be of as good strength, virtue and effect, as if they had been had and made by authority of Parliament.

How much the King's farmer of the subsidy of woollen cloths in Wales shall take for the sealing of a cloth.

CXXI. *Item*, Be it further enacted and ordained by authority aforesaid, That where the King's Majesty that now is, by his letters patents bearing date the first day of *May* in the thirty-fourth year of his most prosperous reign, demised and granted to *William Webbe* the subsidy and usage of all woollen clothes made or to be made in the county of *Monmouth*, and in the twelve shires of *Wales*, that is to say, in the county of *Brecknock*, *Radnor*, *Montgomery*, *Caermarthen*, *Glamorgan*, *Pembroke*, *Cardigan*, *Anglesey*, *Flint*, *Denbigh*, *Caernarvon* and *Merioneth*, and in all and singular towns and other places whatsoever they be, within the precinct and limits of the said counties, and elsewhere within the dominion of *Wales*; to have and hold to the said *William Webbe* and his assigns, for certain years yet enduring, that the said *William Webbe*, his deputies and assigns, shall have from henceforth full power and authority, by force of this Act, to take for the sealing of every woollen cloth hereafter to be made in the said twelve shires, and elsewhere within the said dominion of *Wales*, as hereafter is declared, and none otherwise; that is to say, for every whole piece of frize, *j. d.* every half piece of frize, *ob.* every piece of cotton and lining being *xxiv.* yards and under, *ob.* and for every piece of the same being above *xxiv.* yards, *j. d.* of every broad-cloth, *j. d.* of every piece of kersey being *xviij.* yards and above *j. d.* of every piece of kersey being under *xviij.* yards, *ob.*

Cloths made within the owner's house not put to sale.

CXXII. Provided always, That this Act, ne nothing therein contained, extend not to charge any manner of person or persons being or that hereafter shall be inhabitant in any of the said twelve shires, or elsewhere within the dominion of *Wales*, for any clothes, frizes, kerseys, or linings made or hereafter to be made and occupied within their houses, and not to put to sale to any person or persons, but to their servants for their wearing.

The aulnager in Wales bound to the laws of England.

CXXIII. And further be it enacted by the authority aforesaid, That the said aulnager in *Wales*, by himself, or by his sufficient deputy or deputies, shall in all things to his office appertaining, do and be bound to do and answer in every case, like and according as all and every other aulnager in the realm of *England* doth or ought to do, according to the laws and statutes of the realm of *England*; and for the contrary doing or exercising of the said office, shall in every case and degree suffer, as by the said laws and statutes is ordained, established or enacted for aulnagers under the Lord Treasurer of *England* for the time being.

Haverfordwest a county in itself.

CXXIV. And furthermore the King's Majesty is contented and pleased, notwithstanding the statute made in the twenty-seventh year of his most gracious reign, That where there should be but twelve shires in *Wales*, that the town of *Haverfordwest* shall be a county in itself as it hath been before this time used, at the will and pleasure of the King's said Majesty; and that it shall be separated from the county of *Pembroke* at the King's said pleasure. And that the King's high justice of the said county of *Pembroke*, shall be high justice of the said county and town of *Haverfordwest*, and shall have like power and authority, to and for the administration of justice within the said county and town of *Haverfordwest*, as is limited and appointed to the said justice to and for the administration of justice in the said county of *Pembroke*. And that the mayor, sheriff, bailiffs and burgesses of the said county and town of *Haverfordwest*, from time to time, shall be as well attendant, and obey all precepts and commandments of the president and council of our said Sovereign Lord the King in his marches of *Wales*, as also shall be attendant to all precepts and process awarded or directed by the said high justice unto the sheriff of the said county and town of *Haverfordwest*,

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and to make return thereof. And the said sheriff of the said county and town shall serve all precepts and process directed from the said high justice, in like manner and form as the sheriff of the said county of *Pembroke* is bound to do, and according to the effect and purport of the King's ordinances in that behalf had, made and provided. And that it shall be lawful unto the said mayor, sheriffs, bailiffs and burgesses of the said county and town of *Haverfordwest* aforesaid, to use and exercise all lawful liberties and grants, by the King's Majesty or his noble progenitors to them granted and confirmed at the King's Majesty's will and pleasure, according to the laws of the realm of *England*, and not otherwise.

The judicial seal of Pembroke, &c.

And that the judicial seal of the said shires of *Pembroke*, *Caermarthen* and *Cardigan*, being in the custody and keeping of the King's high justice there for the time being, shall be used in the said county and town of *Haverfordwest*, as the original and judicial seal of the said town and county. And that the said justice of the said shires of *Pembroke*, *Caermarthen* and *Cardigan*, shall have like power and authority by virtue of the King's letters patents to him made, as well to do all and every thing and things concerning common justice to be ministered within the said town and county of *Haverfordwest*, as he hath in his said letters patents within any of the said shires of *Pembroke*, *Caermarthen*, and *Cardigan*.

CXXV. Provided alway, That this article touching and concerning the county and town of *Haverfordwest*, and all things therein contained, shall stand and endure but only at the King's Majesty's will and pleasure, and none otherwise.

This Act prejudicial to no man's inheritance.

CXXVI. Provided alway, That this Act or any thing therein contained shall not be prejudicial nor hurtful to any person or persons, or bodies politic, for or concerning any lands, tenements, rents, services, bondmen, tolls or other hereditaments; but that they and every of them, their heirs, successors and assigns, and the heirs, successors and assigns of every of them, shall have, hold and enjoy their lands, tenements, rents, services, bondmen, and other their hereditaments, in such like manner, form and condition, as they had the same before the making of this Act, and as if this Act had never been had ne made.

Every of the King's officers may enjoy his office and fees as he did before.

CXXVII. Provided also, That this Act nor any thing therein contained shall be hurtful or prejudicial to any person or persons for or concerning any office or offices, which they or any of them have by virtue of any of the King's letters patents, being now in force before the making of this Act, nor to the fees of money used and accustomed to be paid for the exercise of any such offices, but that every person and persons having such offices and fees, and their substitutes and deputies, shall and may have and exercise their said offices as is limited by this Act, and as they might have done before the making of this Act, and shall also have and perceive all such fees for the exercise of the said offices, in as large and ample manner, form and condition, as they might afore the making of this Act, and as if this Act had never been had ne made.

No gavelkind land, but descendible according to the course of the common law.

CXXVIII. Provided always, That all lands, tenements and hereditaments, within the said dominion of *Wales*, shall descend to the heirs, according to the course of the common laws of the realm of *England*, according to the tenor and effect of this Act, and not to be used as gavelkind; any thing contained in these provisions, or any of them, to the contrary thereof notwithstanding.

The offices and fees of George Blunt reserved.

CXXIX. Provided always, That this Act, ne any clause, article or thing therein contained, be in any wise prejudicial or hurtful to *George Blunt*, Esquire, son and heir of Sir *John Blunt*, Knight, deceased, for or concerning the offices of stewardships of the King's lordships, or manors of *Bewdley* and *Clebury*, or any other office or offices heretofore granted unto the said *George Blunt* by the King's letters patents, sealed under the great seal of *England*, for term of life of the same *George*, or for or concerning any fees, wages, rewards, annuities, profits, commodities, advantages or emoluments, appertaining or belonging unto

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the said offices or any of them; but that the said *George*, his deputy and deputies, shall and may at all time and times, during the life of the same *George*, have, hold, exercise and enjoy the same offices, and every of them, and also perceive, levy and take the fees, wages, rewards, and all other profits and commodities to the same offices, and every of them, or to any of them belonging, or in any wise appertaining, in as large and ample manner, form and condition, to all intents, constructions and purposes, as though this Act had never been had or made; any thing before in this Act contained to the contrary notwithstanding.

CXXX. Provided always, That all liberties, franchises and privileges of the duchy of *Lancaster*, or in any wise appertaining to the same, shall be of the same force, plight, quality, goodness and condition, and may be used in as large and ample manner, as they were before the making of this Act, and as if this Act had never been had nor made, any thing in this Act to the contrary thereof notwithstanding.(1)

All liberties of the duchy used as before.

[No. XXIX.] 1 Edward VI. c. 10.—The Bill for Exigents and Proclamations in *Wales*, and in the County Palatine of *Chester*.

1 Edward VI. c. 10. 27 H. 8. c. 26.

'WHEREIN the High Court of Parliament holden at *Westminster* in the seven and twentieth year of the most prosperous reign of the late famous King *Henry* the Eighth, by the assent of the Lords Spiritual and Temporal, and the Commons, assembled in the said High Court of Parliament, it was enacted and established by authority of the same Parliament, That his Highness dominion and principality of *Wales*, and all manors, lands, tenements, and other dominions within the said dominion and principality of *Wales*, should be divided into twelve shires or counties, that is to say, the shires or counties of *Glamorgan*, *Radnor*, *Brecknock*, *Caermarthen*, *Pembroke*, *Cardigan*, *Merioneth*, *Montgomery*, *Flint*, *Caernarvon*, *Anglesey* and *Denbigh*; In every of which said counties and shires, amongst the officers yearly appointed, it was then ordained, that there should be distinct and several sheriffs yearly; And also where the counties palatine of *Chester*, and of the city of *Chester*, be ancient and several counties palatine of themselves, in all which said counties the King's writ hath not nor yet doth run; so that the proclamation awarded upon any *exigent* against any person or persons in any action wherein process of outlawry doth lie, according to the statute made in the sixth year of the reign of the said late King, cannot be directed unto the sheriff or sheriffs of any of the said shires or counties, but unto the sheriff of the county next adjoining: So that the party dwelling in any of the said shires or counties against whom any such *exigent* and proclamation shall be so awarded, shall not, nor can have any knowledge of the same suit or process, by reason whereof many of the persons inhabiting in the said shires or counties, without knowledge or cause of suit, have been wrongfully and unjustly outlawed to their utter undoing.'

II. Be it therefore, and for divers other good considerations, by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and

Exigents and proclamation shall be award-

(1) Mr. Barrington observes, that the justices of the Great Sessions have so long exercised the power of deciding causes in a court of equity, that it cannot now be disputed: but that how they originally obtained this jurisdiction is rather dark, as in the present statute, which most particularly enumerates every officer in the courts of law, there is no mention made of any officer for the courts of equity. He also takes notice, that by a manuscript of all the King's officers in the first of Queen Mary, it appears that Roger Vaughan was Chancellor of Brecknock, but Walter Devereux, Viscount Hereford, was at that time justice; Sir John Salisbury was likewise then Chancellor of North Wales, and William Cook, justice: so that the offices in that reign were considered as distinct. —It is to be remarked, that in stat. 27 Hen. VIII. c. 26, (the last Number) sec. 9, it is provided, that there shall be a Chancery at Brecknock and another at Denbigh.

No. XXIX. 1 Edward VI. c. 10.

by the authority of the same, enacted, ordained and established, That if and whensoever any writ of *exigent*, at any time after the first day of *April* next coming, shall be awarded at the suit of the King, or of any other person or persons, plaintiff or plaintiffs in any action or suit in any of the courts of our said Sovereign Lord the King, his heirs or successors, commonly called the King's Bench and the common place, against any person or persons dwelling in any of the aforesaid counties in *Wales*, or in the said counties palatine of *Chester*, or of the city of *Chester*, or in any of them, that then immediately upon the awarding of every such *exigent*, the justice or justices before whom any such writ of *exigent* upon such suit or action shall be sued, shall have full power and authority to award one writ of proclamation according to the tenor and effect of proclamations awarded upon *exigents*, and directed out of any of the said courts into *London* against any person dwelling in any other shire where the King's writ is current, according to the order and form of the said statute made in the sixth year of the said late King, to be directed to such of the aforesaid sheriffs of any of the aforesaid counties in *Wales*, and of the counties palatine of *Chester*, and of the city of *Chester* for the time being, where it shall happen the said defendant, against whom any such action shall be sued as is aforesaid, to be dwelling: And that every such writ of proclamation shall have the same *teste* and day of return, as the *exigents* whereupon every such writ of proclamation shall be awarded shall have; and that every such sheriff to whom any such writ of proclamation shall be directed, shall make proclamation of the said writ of proclamation according to the tenor of the same, and shall make true return of the same in such court, and before such justices, as the tenor of the same writ shall require and demand. And that all outlawries hereafter to be promulged or pronounced against any person or persons upon any such *exigent* or *exigents* awarded against any person or persons dwelling in any of the said counties of *Wales*, and in the counties palatine of *Chester*, and of the city of *Chester*, and no writ of proclamation awarded in form abovesaid to the sheriff or sheriffs of the county where the party defendant shall be as is abovesaid dwelling, or not returned, to be clearly void and of none effect or force in the law.

ed out of the King's Bench and Common Pleas against any person dwelling in Wales or Chester,

Every sheriff in Wales and of Cheshire and Chester shall have deputies in the King's Bench & Common Place.

III. And be it further enacted by the authority aforesaid, That all and every sheriff and sheriffs of every of the said counties of *Wales*, and of the counties palatine of *Chester*, and of the city of *Chester* aforesaid, shall have in every of the said courts of the King's Bench and of the Common Place one sufficient deputy at the least, to receive all writs directed to such the sheriff or sheriffs for whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the former statutes and laws of this realm other sheriffs of other shires or counties within this realm of *England* be bounden to have in either of the same courts. And that all writs of proclamation aforesaid shall be delivered unto every such deputy of record in the same courts; and also like fees shall be paid for making every such writ of proclamation, and for enrolling the same of record, as is limited in the said statute made in the said sixth year of the reign of our said late Sovereign Lord King *Henry* the Eighth.

To whom process against any person outlawed shall be directed,

IV. And be it further enacted by the authority aforesaid, That if any person dwelling in any of the said counties of *Wales*, after the aforesaid first day of *April*, shall be outlawed in any suit or action aforesaid, That then writs of special *capias utlagatum*, single *capias utlagatum*, *non molestand'* and all other process, for or against any person outlawed, shall and may from henceforth be directed to the sheriff of any of the said counties in *Wales*, as immediate officers to the King's said courts of the *King's Bench* or *Common Place* in that behalf: And that every such writs may be delivered of record to the deputy of such of the said sheriffs to whom any such writ or process shall be directed, and that every such sheriff shall make execution and return of every such writ or process to him directed, upon like pain and penalty as is above limited.

No. XXIX. 1 Edward VI. c. 10.

V. And be it further enacted and established, That if any such writ or writs of proclamation hereafter directed to any of the sheriffs of any of the said shires in *Wales*, or counties palatine of *Chester*, or of the city of *Chester*, be delivered unto any of the said sheriffs for the time being, or to his or their deputy, in manner and form aforesaid, and the same sheriff or sheriffs do not make true return of every such writ or writs of proclamation, into such court and courts out of which the said writ or writs of proclamation shall be awarded; that for every such *default* or non-return, every such sheriff for the time being shall lose and forfeit five pound; the one half thereof shall be to our Sovereign Lord the King, his heirs and successors, the other half to any such person or persons as will sue for the same in an action of debt grounded upon this Act, in any of the King's Courts of record, wherein no essoign, protection or wager of law shall be allowed or admitted.

The sheriff's forfeiture for not returning of a writ of proclamation.

VI. Provided always, That this Act, or any thing therein contained, shall not in any wise extend or be prejudicial to the same counties of *Wales*, or to the same counties palatine of *Chester*, or of the city of *Chester*, for or concerning such liberties, franchises or privileges, as belong to them or any of them, or to any ministers or officers of them or any of them, otherwise or in any other manner, than by the true meaning of this Act is before provided and declared; any thing in this Act mentioned to the contrary notwithstanding.

A reservation of other liberties in Wales, &c.

VII. Provided always, and be it enacted by the authority aforesaid, That this Act, ne any thing therein contained, shall not in any wise be prejudicial or hurtful to any lord marcher in *Wales*; but that they and every of them, and their heirs, and the heirs of every of them, shall and may have like liberty, interest and pre-eminence, as they and every of them had, might or ought to have had, before the making of this Act, and as though this Act had never been had no made; any thing in this Act mentioned to the contrary in any wise notwithstanding.

The liberties of the lord marchers reserved.

[No. XXX.] 5 & 6 Edward VI. c. 26.—An Act for Writs of Proclamation upon *Exigend*, to be current in the County Palatine of *Lancaster*.

5 & 6 Edw. VI. c. 26.

'WHERE the county of *Lancaster* is, and of long time hath been one ancient county palatine of itself, in which county the king's writ hath not, nor yet doth not run, so that the writ of proclamation awarded upon any *exigend* against person or persons inhabiting within the same county, in any action wherein process of outlawry doth lie, according to the statute made in the sixth year of the reign of our late Sovereign Lord of famous memory, King *Henry* the Eighth, cannot be directed to the sheriff of the said county palatine, but unto the sheriff of the county next adjoining unto the said county palatine, so that the party dwelling within the said county palatine, against whom any such *exigend* and proclamation hath been or shall be awarded, hath not had, nor hereafter can have, any knowledge of the same suit or process, by reason whereof many persons inhabiting within the said county palatine, without knowledge have been outlawed, and hereafter be in like manner like to be outlawed, to their utter undoing, if some speedy remedy be not the sooner provided:'

Writs upon exigends and proclamations shall be current in Lancaster. 6 H. 8. c. 4.

II. Be it therefore, and for divers other good considerations, enacted, ordained and established by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if and whensoever any writ of *exigend*, at any time after the first day *April* next coming, shall be awarded at the suit of the King, his heirs or successors kings of this realm, or at the suit or suits of any other person or persons, plaintiff or plaintiffs, in any action or suit in any of

A proclamation upon an exigend awarded against any person dwelling in the county of Lancaster.

No. XXX. 5 & 6 Ed. VI. c. 26.

the courts of our said Sovereign Lord the King, his heirs and successors kings of this realm, commonly called the *King's Bench* and the *Common Place*, against any person or persons dwelling within the said county palatine: That then immediately upon the awarding of every such *exigend*, the justice or justices before whom any such writ of *exigend* upon such suit or action shall be sued, shall have full power and authority by virtue of this Act, to award one writ of proclamation (according to the tenor and effect of writs of proclamation awarded upon *exigends*, and commonly directed out of any of the said courts into *London*, or into any other shires of this realm, against any person or persons dwelling in other shire or shires of this realm where the king's writs do run, according to the order and form of the said statute made in the sixth year of the reign of the said late King) to be directed to the sheriff of the said county palatine of *Lancaster*, where it shall happen the said defendant, against whom any such action shall be sued as is aforesaid, to be dwelling, and not to the sheriff of any other shire next adjoining to the said county palatine; any law, custom or usage heretofore used to the contrary notwithstanding: And that every such writ of proclamations so to be hereafter awarded to the sheriff of the said county palatine, shall have the same *teste* and day of return as the *exigends* whereupon every such writ of proclamation shall be awarded shall have.

The sheriff of the county of Lancaster shall make proclamation according to the tenor of his writ.

III. And that every such sheriff of the said county palatine of *Lancaster*, to whom any such writ or writs of proclamation shall be directed, shall make proclamations of the said writ and writs of proclamation, according to the tenor of the same, and shall make true returns of the same, in such court and courts, and before such justices, as the tenour of the same writ and writs of proclamation shall require and demand: And that all outlawries hereafter to be promulged or pronounced against any person or persons, upon any such *exigend* or *exigends* awarded against any person and persons dwelling in the said county palatine of *Lancaster*, and no writ of proclamations awarded in form abovesaid to the sheriff of the said county palatine of *Lancaster*, where the party defendant shall be as is aforesaid dwelling, or not returned, to be clearly void, of none effect nor force in the law.

IV. And be it further enacted by the authority aforesaid, That every sheriff of the said county palatine for the time being shall have in every of the said courts of the King's Bench and of the Common Place, one sufficient deputy at the least, to receive all such writs of proclamations which shall be hereafter directed to every such sheriff of the said county palatine, for whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the former statutes and laws of this realm other sheriffs of other shires or counties within this realm of *England* be bounden to have in either of the said courts: And that all such writs of proclamations aforesaid shall be delivered unto every such deputy or deputies of record in the same courts, and either of them; and also like fees shall be paid for making every such writ of proclamations, and for enrolling the same of record, as is limited in the same statute made in the said sixth year of our said late Sovereign Lord King *Henry* the Eighth.

6 Henry VIII. c. 4.

The sheriff's forfeiture for not returning of a proclamation.

V. Be it further enacted and established by the authority aforesaid, That if any such writ or writs of proclamations hereafter to be directed to any sheriff of the said county palatine of *Lancaster*, be delivered unto any of the sheriffs of the said county palatine for the time being, or to his or their deputy or deputies, in manner and form aforesaid, and the same sheriff or sheriffs do not make true return of every such writ and writs of proclamations into such court and courts out of which the said writ or writs of proclamations shall be awarded, that for every such default of non-return, every such sheriff for the time being shall lose and forfeit five pounds; the one half whereof shall be to our Sovereign Lord the King, his heirs and successors, and the other half thereof to any such person or persons as will sue for the same in one action of debt to be grounded upon this Act, in any of the King's Courts

No. XXX. 5 & 6 Ed. VI. c. 26.

of record, wherein no essoign, protection or wager of law shall be allowed or admitted.

VI. Provided always, That this Act, or any thing therein contained, shall not in any wise extend or be prejudicial to the said county palatine of *Lancaster* for or concerning such liberties, franchises or privileges as belong to the same, or to any ministers or officers of the same county palatine, otherwise or in any other manner than by the true meaning of this Act is before provided and declared; any thing in this Act mentioned to the contrary notwithstanding.

This statute shall not prejudice the liberties of the county of Lancaster.

VII. Provided also, and be it further enacted and established by the authority aforesaid, That if any person or persons dwelling within the said county palatine, after the aforesaid first day of *April*, shall be outlawed in any such suit or action as is aforesaid, that then all writs of special *capias utlagatum*, single *capias utlagatum*, *non molestandum*, and all other process, for or against any person or persons so outlawed, shall and may from thenceforth be directed from time to time to the chancellor of the duchy of *Lancaster*, who shall make like writs and process thereupon, and of like effect, sealed with the seal of the said county palatine of *Lancaster*, to be directed to the sheriff of the said county palatine for the time being, as heretofore hath been used and accustomed in such cases. 1 Ed. 6. c. 10.

Process awarded against any person outlawed, dwelling in the said county palatine.

[No. XXXI.] 5 Elizabeth, c. 25.—An Act to fill up Juries lacking in *Wales de Circumstantibus*.

5 Elizabeth, c. 25.

'WHERE in the Parliament holden at *Westminster* in the thirty-fifth 'year of the reign of our late Sovereign Lord King *Henry* the 'Eighth, father to our most dear Sovereign Lady the Queen's Majesty 'that now is, one wholesome and profitable Act and estatute amongst 'other was then established and enacted, intituled by the name of "an 'Act concerning the appearance of jurors in *nisi prius*:" Where amongst 'things in the Act it was established, That where a full jury returned 'betwixt party and party did not appear before the justices of assize, or '*nisi prius*, or else after appearance of a full jury, by challenge of any 'of the parties, the jury was like to remain untaken for default of jurors, that the same justices upon request made by the party plaintiff 'or demandant, should have authority by virtue of the same Act, to 'command the sheriff, or other minister or ministers to whom the making of the said return should appertain, to name and appoint, as often 'as need should require, so many of such other able persons of the 'said county, then present at the said assize or *nisi prius*, as should 'make up a full jury: Which persons so to be named and impanelled 'by such sheriffs, or other minister or ministers, should be added to the 'former panel, and their names annexed to the same, and further as in 'the same Act more plainly may appear: Which said beneficial Act 'doth not extend unto the twelve shires of *Wales*, ne to the county palatine of *Chester*, nor to the county palatine of *Lancaster*, nor to the 'county palatine of *Durham*, by reason whereof many juries remain 'untaken betwixt the parties, what for lack of appearance of jurors, and some because of challenges, to the great hindrance of justice, 'and great expenses and charges to the parties:'

A rehearsal of the statute of 35 H. 8. c. 6. touching the filling up a jury de circumstantibus.

II. For reformation whereof, be it enacted by the Queen our Sovereign Lady, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That in every of the shires of *Wales*, that is to say, *Pembroke*, *Carmarthen*, *Cardigan*, *Brecknock*, *Radnor*, *Glamorgan*, *Montgomery*, *Denbigh*, *Flint*, *Merioneth*, *Anglesey*, *Carnarvon*, and in the county palatine of *Chester*, and in the said county palatine of *Durham*, and in the said county palatine of *Lancaster*, where a full jury shall not appear before the justices of the Great Sessions in any of the said shires or counties palatine, or their deputies there, or else after appearance of a full jury, by challenge of any of the parties, the jury is

In certain cases a tales de circumstantibus may be granted in the twelve shires in Wales, and in the county palatine of Chester, &c. by the justices at their Great Sessions.

No. XXXI. 5 Elizabeth, c. 25.

like to remain untaken for default of jurors, That then the same justices, in every of the said shires and counties palatine for the time being, or their deputy or deputies, upon request made by the party plaintiff or demandant, shall have full authority by virtue of this Act to command the sheriff, or other minister or ministers to whom the making of the said return shall appertain, to name and appoint, as often as need shall require, so many of such other able persons of the said counties, then present at the said Great Sessions, as shall make up a full jury: Which persons so to be named and impanelled by such sheriffs, or other minister or ministers, shall be added to the former panel, and their names annexed to the same: and that every of the parties shall only have his or their challenge to the jurors so named, added and annexed to the said former panel, by the said sheriff or other minister or ministers, in such wise as if they had been impanelled upon the *venire facias* awarded to try the said issue: And that the said justices, and every of them, and their deputy or deputies, shall and may proceed to the trial of every such issue with those persons that were before impanelled and returned, and with those newly added and annexed to the said former panel by virtue of this Act, in such wise as they might or ought to have done, if all the said jurors had been returned upon the writ of *venire facias* awarded to try the said issue: And that all and every such trial had, shall be as good and effectual in the law, to all intents, constructions and purposes, as if such trial had been had and tried by twelve of the jurors impanelled and returned upon the writ of *venire facias* awarded to try such issue; And in case such persons as the said sheriff, minister or ministers, shall name and appoint, as is aforesaid, or any of them, after they shall be called, be present and do not appear, or after his or their appearance do wilfully withdraw him or themselves from the presence of the court, That then such justices or their deputies, shall and may set such fine upon every such juror making default, or wilfully withdrawing himself as aforesaid, as they shall think good by their discretions; the said fine to be levied in such manner and form as issues forfeited and lost by jurors for default of their appearance, as is provided by the law and custom of the said counties of *Wales*, and counties palatine aforesaid, where such issues are forfeited.

Challenge to the jurors newly named.

A juror newly impanelled doth withdraw himself.

III. And be it further enacted by the authority aforesaid, That where any jury that shall be returned by the sheriff or other minister or ministers, shall be made full by the commandment of the said justices or their deputies, by virtue of this present Act, that yet nevertheless such persons as were returned in the said panel by the sheriff or other minister or ministers, to try any such issue that shall not appear, but make default, shall lose the issues upon them returned, in such wise as though the same jury had remained for default of jurors.

The first jurors making default shall lose their issues.

IV. Provided always, and be it further enacted, That upon a reasonable excuse for the default of appearance of any juror or jurors, sufficiently proved before the justices of the Great Sessions, or their deputies, in the countries and counties palatines aforesaid, at the day of their appearance, by the oaths of two lawful and honest witnesses, that the same justices shall have authority by their discretions to discharge every such juror of every such forfeiture of issues upon him returned; and that the said sheriff or sheriffs, or other minister or ministers, having commandment by the said justices to omit the returning of such issues as is aforesaid, upon such juror or jurors, shall be therein discharged of the penalties aforesaid for the non-returning of the said issues, and that yet notwithstanding the said return to be good and effectual in the law; any law, usage, ordinance or custom to the contrary notwithstanding.

Upon a reasonable excuse, jurors shall be discharged of issues.

V. Provided also, and be it enacted by the authority aforesaid, That if the said justices or their deputies, afore whom any such jury should appear in the shires or counties palatines where such issue is to be tried, do not come at the day and place appointed, That then every one of the same jurors shall be discharged for forfeiting of any issues upon him

If the justices come not, the jurors shall be discharged of their issues.

returned in the same writ: And the sheriff or other minister or ministers shall be likewise discharged of the penalties of this estatute, for the non-returning of such issues as are before limited in this Act; any article or sentence herein contained to the contrary notwithstanding.

The sheriff's forfeiture for returning of issues upon a juror not warned.

VI. And also be it further enacted by the authority aforesaid, That if upon any such writ of *habeas corpora* or *distringas*, issues be returned upon any hundredors, juror or jurors, by the sheriffs or other minister or ministers to whom the execution of the same writ or writs shall appertain, whereas the same hundredors and jurors, shall not be lawfully summoned, warned or distrained in that behalf, That then every such sheriff, or other minister or ministers aforesaid, shall lose for every such offence so committed double so much as the said issues returned upon such hundredors or jurors not lawfully summoned, warned or distrained, shall amount unto: the moiety of all which forfeitures contained in this present Act, other than the issues to be returned upon the jurors, as is aforesaid, shall be to the Queen our Sovereign Lady, her heirs and successors, and the other half to him that will sue for the same by action of debt, bill, plaint or information, in the Queen her Grace's great court within the said county where such forfeiture shall happen to be, before the said justices, his or their deputy or deputies; in which no wager of law, essoign or protection shall be allowed ne admitted: saving to all manner of persons and bodies politic and corporate, their heirs and successors, having lawful right, title and interest, to have such issues, to be before any such justices or their deputies at any time or times hereafter lost and forfeited, all such right, title, and interest as they or any of them should or ought to have had to such issues to be lost and forfeited, as though this Act had never been had or made.

Who shall have the forfeitures, and by what means they shall be recovered.

Returning of inquests in cities and towns corporate.

VII. Provided also, That this Act, nor any thing therein contained, shall not extend to any city or town corporate, or to any sheriff, minister or ministers in the same, for the return of any inquest or panel to be made and returned of persons inhabiting in the said cities or towns corporate, but that they and every of them shall and may return such persons in every such inquest or panel, as before this time they might and have been accustomed to do, and as if this Act had never been had or made, so that the same sheriff, minister or ministers, return upon such persons as shall be impanelled, such like and reasonable issues as they ought to return; any thing in the same contained to the contrary notwithstanding. 2 and 3 Edward VI. c. 32.

[No. XXXII.] 18 Elizabeth, c. 8.—An Act for the appointing of Justices in the Shires of *Wales*.

18 Elizabeth, c. 8.

The Queen may appoint justices of assizes in Wales, and of what things they may hold plea.

27 Henry 8. c. 26.

34 & 35 H. 8. c. 26.

'WHEREAS by divers laudable statutes, usages and laws of this realm, for the good government and administration of justice within the principality and dominions of *Wales* and the county palatine of *Chester*, it hath been established, used and enacted, among other things, That there shall be holden and kept sessions twice in every year in every of the shires in the said dominion and principality of *Wales*; that is to say, in the shires of *Glamorgan*, *Brecknock*, *Radnor*, *Caermarthen*, *Pembroke*, the town and county of *Haverfordwest*, *Cardigan*, *Mountgomery*, *Denbigh*, *Flint*, *Caernarvon*, *Merioneth* and *Anglesey*, and in the said county palatine of *Chester*; the which sessions are called the King's Great Sessions: And that the justice of *Chester* for the time being shall hold and keep sessions twice in every year in the shires of *Chester*, *Denbigh*, *Flint* and *Mountgomery*; And likewise that the justice of *North Wales* shall hold and keep sessions twice in every year in every of the said shires of *Caernarvon*, *Merioneth* and *Anglesey*; And that also one person learned in the laws of this realm of *England*, by the Queen's Majesty to be appointed, shall be justice of the shires of *Radnor*, *Brecknock* and *Glamorgan*, and shall in like wise hold and keep sessions twice in every year in every

No. XXXII. 18 Elizabeth, c. 8.

'of the same shires: And that one other person learned in the laws of 'this realm, to be appointed as is aforesaid, shall be justice of the shires 'of *Caermarthen*, *Pembroke* and *Cardigan*, and the town and county of '*Haverfordwest*, and shall likewise hold and keep sessions twice in 'every year in every of the said shires: And that the said persons or 'justices, and every of them then being, or that thereafter should be, 'should have several letters patents and commissions for their offices 'under the great seal of *England*, to be exercised by themselves or their 'sufficient deputies, according to the purports and intents in the ordi-'nances specified:

The benefits ensuing by the administration of justice in Wales, Cheshire, &c.

'II. Forasmuch as by the good administration of justice within the 'said shires and counties, the same principality and dominion of *Wales*, 'and the said county palatine of *Chester*, are reduced to great obedi-'ence of her Majesty's laws, and the same greatly inhabited, manured 'and peopled, and for that all and all manner of causes, pleas, actions, 'as well real, personal and mixt, as treasons, pleas of the crown, at-'taints, conspiracies, assizes, *quare impedit*, appeals of murder, maims 'and felony, and trial upon all murders, manslaughters and felonies 'whatsoever arising within the said several circuits, are by the said 'laws, usages and statutes impleadable, impleaded and determinable 'before one only justice as is aforesaid: And for that many great and 'weighty causes, matters, questions, demurrers and ambiguities in law 'do thereupon daily arise, increase, and are like daily more and more 'to increase, within the said shires, to the infinite trouble of such one 'justice within every of the said several circuits, and to the great delay 'and hindrance of administration of justice:

To have one judge overcharged with the hearing of many causes, is a great delay of justice.

'III. For the better and more speedy remedy whereof, her Majesty's 'subjects of the said principality and dominion of *Wales* and county 'palatine of *Chester*, have made their most humble petition and suit to 'her Highness to have two justices learned in the laws in every of the 'said several circuits: And forasmuch as some question, ambiguity and 'doubt hath been heretofore made, whether her Highness by her letters 'patents under the great seal of *England* might or may authorise, con-'stitute or appoint two persons or more to be her Highness' justices in 'every of the said several circuits, or grant commission or commissions 'of association or associations to or with every or any such several jus-'tice and justices, or no: And also whether after such grant, the admi-'nistration of justice in those offices and function done by two, may be 'sufficiently rewarded by law, or no: For plain explanation whereof, 'and for the better redress and more speedy administration of justice to 'be had touching the premises,' Be it declared, explained, enacted and established by the Queen's most excellent Majesty, by the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same; That the Queen's Highness, her heirs and successors, may and shall at her and their will and pleasure, have full power, prerogative and authority, from time to time, to constitute, authorise, name or appoint two or more learned as aforesaid in the laws of this realm, to be justices of and for the said counties of *Chester*, *Flint*, *Denbigh* and *Mountgomery*, and two or more learned as aforesaid, to be justices of *North Wales*, *viz.* of and for the said shires of *Anglesea*, *Caernarvon* and *Merioneth*, and likewise two or more learned as aforesaid, to be justices of and for the said circuits and shires of *Radnor*, *Glamorgan* and *Brecknock*, and also two or more learned as aforesaid, to be justices of and for the said circuit and shires of *Cardigan*, *Caermarthen* and *Pembroke*, and the town and county of *Haverfordwest*; any law, usage, opinion or statute to the contrary notwithstanding.

The Queen may grant commissions of association to any persons learned to be associate with justices.

'IV. And that her Majesty, her heirs and successors, may and shall at her and their good will and pleasure, from time to time, associate and grant commission and commissions of association or associations under the great seal of *England* to any person or persons learned, as aforesaid, to be associate to or with every or any such several justice or justices for the time being, of the said several circuits and counties aforesaid, or

in any of the said counties: And that all and every such two justices or more, within every of the said several circuits and counties, and also that every such justice or justices, together with such person or persons associate (if any such association or associations shall happen to be, as aforesaid) during such association, and after such association ended, or without such association, such justice or justices shall have the like full power, pre-eminence, authority and jurisdiction from henceforth, to all intents, constructions, purposes and effects, as any one justice within any of the said circuits or shires aforesaid, now hath, or at any time heretofore had or ought to have: and also shall have like power, authority, pre-eminence and jurisdiction to keep and hold the several sessions aforesaid twice in every year, in every of the said shires within their several circuits aforesaid, and to hear, determine, order, award, adjudge, receive, take knowledge of, and execute all and singular causes, matters, pleas and assizes, treasons, murders, felonies, indictments, appeals of murder, felony and maims, actions reals, personals and mixt, suits, plaints, informations, quarrels, attaints, conspiracies, *quare impedit*, and all actions grounded upon any statute or statutes, writs, processes; returns, essoigns, verdicts, judgments, fines, acknowledges, confessions, warrants and executions, actions and acts whatsoever, and to do, perform, observe, accomplish and make all and every other Act and Acts, matter and matters, thing and things whatsoever, in like and in as ample, beneficial, lawful and effectual manner and form, to all constructions, qualities, intents and purposes, as any of the now several justices, or any one of the now justice or justices within the same several circuit or circuits, and counties aforefaid, may, ought, hath or might lawfully do by force of any law, usage or statute heretofore had, made or used before the making of this Act; and that from henceforth all and singular writs, processes, returns, essoigns, verdicts, judgments, fines, recoveries, recognizances, acknowledges, confessions, act and acts, thing and things, matter and matters as aforesaid, had, made, taken, done, returned, heard, determined, awarded, adjudged or executed by or before any such two justices or more, or any such justice or justices, and associate or associates, as aforesaid, to be appointed, nominated, authorized or constituted as aforesaid, shall be allowed, taken, construed, expounded and adjudged as good, effectual, and available, to all intents, constructions and purposes, as if the same had been had, made, taken, done, returned, heard, determined, awarded, adjudged or executed by or before any such one justice, or one of the justices now or late being justice or justices of the same circuit, or several circuits aforesaid; any law, usage, statute, Act, ordinance or prescription to the contrary in any wise notwithstanding.

No. XXXII. 18 Elizabeth, c. 8.

Of what things the two justices, or they with the associates, may hold sessions.

[No. XXXIII.] 18 Elizabeth, c. 13.—An Act concerning Offices found within the Counties Palatine.

[No. XXXIV.] 27 Elizabeth, c. 9.—An Act for Reformation of Errors in Fines and Recoveries in the twelve Shires of *Wales*, and Counties Palatine, and for Exemplification of Fines and Recoveries generally.

[Inserted Part II. Class X. No. 18.]

[No. XXXV.] 31 Elizabeth, c. 9.—An Act for Writs upon Proclamation and *Exigents* to be current within the County Palatine of *Durham*.

31 Elizabeth, c. 9.

'WHERE the bishopric of *Durham* is, and of long time hath been, an ancient county palatine of itself, in which bishopric the

No. XXXV. 31 Elizabeth, c. 9.

6 H. 8. c. 4.

'Queen's writ hath not, or yet doth run; so that the writ of proclamation awarded upon any *exigent* against any person or persons inhabiting within the same county, in any action wherein process of outlawry doth lie, according to the statute made in the sixth year of the reign of the late King *Henry* the Eighth, cannot be directed to any sheriff, or other officer within the said bishopric, but unto the sheriff of the county next adjoining unto the said bishopric; so that the party dwelling within the said bishopric, against whom any such *exigent* and proclamation hath been or shall be awarded, hath not had, nor hereafter can have, any knowledge of the same suit or process; by reason whereof many persons inhabiting within the said bishopric, without knowledge have been outlawed, and hereafter are like to be outlawed in like manner, to their utter undoings, if some speedy remedy be not the sooner provided:'

A writ of proclamation upon an exigent against any person dwelling in the bishopric of Durham.

II. Be it therefore, and for divers other good considerations, enacted, ordained and established by the authority of this present Parliament, That whensoever any writ of *exigent*, at any time after the first day of *April* next coming, shall be awarded at the suit of our sovereign Lady the Queen's Majesty, her heirs and successors, kings or queens of this realm, or at the suit or suits of any other person or persons, plaintiff or plaintiffs, in any action or suit in any of the courts of our said sovereign Lady, her heirs or successors, kings and queens of this realm, commonly called the King's Bench and the Common Pleas, against any person or persons dwelling within the said bishopric; that then immediately upon the awarding of every such *exigent*, the justice or justices before whom any such writ of *exigent* upon such suit or action shall be sued, shall have full power and authority by virtue of this Act, to award one writ of proclamation according to the tenor and effect of writs of proclamation awarded upon *exigents*, and commonly directed out of any of the said courts into *London*, or into any other shires of this realm, against any person or persons dwelling in other shire or shires of this realm where the Queen's writ doth run, according to the order and form of the said Act made in the sixth year of the reign of the said late King, to be directed to the Bishop of *Durham* for the time being, and during the vacation of the bishopric, then to the Chancellor of the said bishopric or county palatine for the time being, where it shall happen the said defendant, against whom any such action shall be sued as is aforesaid, to be dwelling, and not to the sheriff of any other shire next adjoining to the said bishopric or county palatine; any law, custom or usage heretofore used to the contrary notwithstanding: And that every such writ of proclamation so to be hereafter awarded to such bishop or chancellor of the said bishopric or county palatine, shall have the same *teste* and day of return, as the *exigents*, whereupon every such writ of proclamation shall be awarded, shall have; And that every such bishop or chancellor, to whom any of the said writ or writs of proclamation shall be directed, shall by his or their mandate directed to the sheriff of the said county palatine, cause proclamation to be made of the same writs of proclamation, according to the tenor of the same, and shall make true returns of the same in such court and courts, and before such justices, as the tenor of the same writ and writs of proclamation shall require and demand: And that all outlawries hereafter to be promulged or pronounced against any person or persons upon any such *exigent* or *exigents*, awarded against any person or persons dwelling within the said bishopric or county palatine, and no writs of proclamation awarded in form aforesaid to the bishop or chancellor aforesaid, where the party defendant shall be as is aforesaid dwelling, or not returned as aforesaid, to be clearly void, and of none effect nor force in the law.

The bishop's mandate to the sheriff to make proclamation.

The bishop of Durham shall have a deputy in the King's Bench and Common Pleas. 23 H. 6. c. 9.

III. And be it further enacted by the authority aforesaid, That every bishop of the said bishopric for the time being, and during the vacation of the said bishopric the chancellor of the said county palatine for the time being, shall have in every of the said Courts of the King's Bench and Common Pleas, one sufficient deputy at the least, to receive all such

No. XXXV. 31 Elizabeth, c. 9.

writs of proclamations which shall be hereafter directed to every such bishop or chancellor of the said bishopric or county palatine, for whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the former statutes and laws of this realm, the sheriffs of other shires or counties within this realm of *England* be bound to have in either of the said courts; and that all such writs of proclamation as aforesaid, shall be delivered unto every such deputy or deputies of record in the same courts and either of them, and also like fees shall be paid for making of every such writ of proclamation, and for enrolling the same of record, as is limited in the same statute made in the sixth year of the said King *Henry* the Eighth.

The forfeiture of the bishop or chancellor that doth not return the proclamation.

IV. And be it further enacted and established by the authority aforesaid, That if any such writ or writs of proclamation hereafter to be directed to any bishop or chancellor of the said bishopric or county palatine, be delivered unto any of the said bishops for the time being, or during the vacation of the said bishopric to the chancellor of the said county palatine for the time being, or to his or their deputy or deputies, in manner and form aforesaid; the same bishop for the time being, or during the vacation of the said bishopric the said chancellor of the said county palatine for the time being, do not make true return of every such writ and writs of proclamation to them directed, into such court and courts out of which the writ or writs of proclamation shall be awarded, that for every such default of non-return, every such bishop for the time being, and during the vacation of the said see the said chancellor for the time being, so failing to make due return, shall lose and forfeit five pounds; the one half whereof shall be to the queen, her heirs and successors, and the other half thereof to any such person or persons as will sue for the same, in any action of debt to be grounded upon this Act, in any of the Queen's courts of record, wherein no essoign, protection or wager of law shall be allowed or admitted.

A provision for the Bishop of Durham's other liberties.

V. Provided always, That this Act, or any thing herein contained, shall not in any wise extend or be prejudicial to any bishop of the said bishopric of *Durham*, for or concerning such liberties, franchises or privileges as belong to the same bishop's bishopric or see, or to any ministers or officers of the same bishopric or county palatine, otherwise or in any other manner than by the true meaning of this Act is before provided or declared; any thing in this Act mentioned to the contrary notwithstanding.

To whom writs shall be directed against any person outlawed in the said bishopric.

VI. Provided also, That if any person or persons dwelling within the said bishopric or county palatine, after the aforesaid first day of *April*, shall be outlawed in any such suit or action as is aforesaid; that then all writs of special *capias utlagatum*, single *capias utlagatum*, *non molestandum*, and all other process, for or against any person or persons so outlawed, shall and may from henceforth be directed from time to time to the bishop of the said bishopric and county palatine for the time being, and during the vacation of the said see to the chancellor there for the time being, who shall make like writs and process thereupon, and of like effect, sealed with the seal of their said offices, to be directed to the sheriff of the said county palatine for the time being, as heretofore hath been used and accustomed in such cases.

One only fee shall be taken for the proclamation, mandate, and execution.

VII. Provided alway, and be it further enacted by the authority aforesaid, That upon any writ of proclamation to be awarded by virtue of this Act, and the mandate thereupon to be made to the sheriff, and the execution thereof, there shall be but one only fee taken, received or demanded for the same by the said bishop, chancellor, and sheriff of the said county palatine for the time being.

[No. XXXVI.] 16 and 17 Charles II. c. 9.—An Act to impower the Chancellor of the Duchy to grant commissions for taking Affidavits within the Duchy Liberties.

No. XXXVI. 16 & 17 Car. II. c. 9.

FOR the greater ease and benefit of the inhabitants within the county palatine of *Lancaster*, and other places within several other counties of this kingdom within the survey of the court of duchy chamber at *Westminster*, in the taking of affidavits in the country, to be made use of and read in causes depending and to be depending within the said court; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the Chancellor of the said duchy and county palatine of *Lancaster* for the time being, shall and may, by one or more commission or commissions from time to time, as need shall require, impower what and as many persons as he shall think fit and necessary, within the said county palatine and other duchy liberties, to take and receive all and every such affidavit or affidavits as any person or persons shall be willing and desirous to make before any of the persons so impowered, in or concerning any cause, matter, or thing depending, or hereafter to be depending, in the said court of duchy chamber, as masters of chancery in extraordinary do use to do; which said affidavits shall be filed in the office of the clerk of the court of the duchy, and then be read and made use of in the said court to all intents and purposes, as other affidavits taken in the said court now are.

II. Provided, That for the taking of every such affidavit the person or persons so impowered and taking the same, shall for so doing receive only the sum or fee of twelve pence, and no more.

[No. XXXVII.] 19 Charles II. c. 5.—An Act extending a former Act concerning Replevins and Avowries, to the Principality of *Wales*, and the County Palatines.

[This Act at length, *post*.—See first Class.]

[No. XXXVIII.] 1 William and Mary, sess. 1. c. 27.—An Act for taking away the Court holden before the President and Council of the Marches of *Wales*.

1 Wm. & Mary, sess. 1. c. 27. 34 & 35 H. 8. c. 26.

'WHEREAS by the statute made in the thirty-fourth and thirty-fifth year of King *Henry* the Eighth, intituled "An Act for certain ordinances in the King's Majesty's dominion and principality of *Wales*," it is enacted, That there shall be and remain a president and council in the said dominion and principality of *Wales*, and the marches of the same, with all officers, clerks and incidents to the same, in manner and form as hath been heretofore used and accustomed; which president and council shall have power and authority to hear and determine, by their wisdoms and discretions, such causes and matters as be, or hereafter shall be, assigned to them by the King's Majesty, as heretofore hath been accustomed and used; and forasmuch as the proceedings and decrees of that court have, by experience, been found to be an intolerable burthen to the subject within the said principality, contrary to the great charter, the known laws of the land, and the birthright of the subject and the means to introduce an arbitrary power and government; and forasmuch as all matters examinable or determinable, or pretended to be examinable or determinable, before the said court of president and council, may have their proper redress in the ordinary course of justice, provided and settled in the several shires within the said principality and dominion:' For remedy whereof,

The court of marches taken away.

II. Be it enacted by the King's and Queen's most excellent Majesties, and by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the before recited clause in the said statute, made in the thirty-fourth and thirty-

No. XXXVIII. 1 W. & M. sess. 1. c. 27.

fifth year of King *Henry* the Eighth, shall be, and is hereby repealed: And that the said court, commonly called the court before the president and council in the marches of *Wales*, and all jurisdiction, power, and authority, belonging unto, or exercised in the same court, or by any the judges, officers, or ministers thereof, be clearly and absolutely dissolved, taken away and determined.

Sheriffs in Wales how chosen.

III. And be it hereby further enacted by the authority aforesaid, That the justices of the great sessions in *Wales* respectively for the time being, shall yearly nominate three substantial persons for each shire in their respective circuits, to be sheriffs of the same, and shall certify their names to the lords of the most honourable privy council *crastino animarum*, to the intent the King's and Queen's Majesties, and the survivor of them, and their successors, being thereof advertised, may appoint one of the persons so certified in every of the said shires to be sheriff for that year.

Errors in pleas personal.

IV. And be it further enacted, That all errors in pleas personal within the said principality or dominion of *Wales*, shall be redressed by writ of error, in the same manner as errors in pleas real and mixed are appointed to be redressed by the said statute, made in the thirty-fourth and thirty-fifth year of King *Henry* the Eighth.

Commencement of the Act. The Courts at Westminster may award execution on these judgments, &c. by 9 & 10 W. 3. c. 15

V. Provided always, That no judgments nor decrees passed in the said court before the first day of *June*, One thousand six hundred eighty-nine, shall be by this Act repealed or annulled, but all and every of them shall remain in the same force, and all executions upon them in the same state, in which they were before the making of this Act; any thing in this Act contained to the contrary notwithstanding.

[No. XXXIX.] 11 and 12 William III. c. 9.—An Act for preventing of frivolous and vexatious Suits in the Principality of *Wales*, and the Counties Palatine.

11 & 12 W. III. c. 9.

'WHEREAS by a clause in an Act made in the twenty-second and twenty-third years of King *Charles* the Second, intituled, "An Act for laying impositions on proceedings at law," it is enacted, That in all actions of trespass, assault and battery, and other personal actions, the plaintiff in such actions, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto; which clause having reference to an Act made in the forty-third year of Queen *Elizabeth*, for avoiding infinite numbers of small and trifling suits commenced in the courts at *Westminster*, hath been understood to relate only to the said courts;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That as well the said clause, and all the powers and provisions thereby, or by any other law now in force, made for prevention of frivolous and vexatious suits in law commenced in the courts at *Westminster*, shall, from and after the first day of *May*, which shall be in the year of our Lord One thousand seven hundred, be extended to, and be of the same force and efficacy in all such suits to be commenced or prosecuted in the court of great sessions for the principality of *Wales*, the court of great sessions for the county palatine of *Chester*, the Court of Common Pleas for the county palatine of *Lancaster*, and the court of pleas for the county palatine of *Durham*, as fully and as amply, as if the said courts had been mentioned therein.

22 & 23 Car. 2. c. 9. s. 136.

43 Eliz. c. 6.

Clause in 22 & 23 C. 2. c. 9. to extend to the courts of great sessions for Wales, Chester, &c.

No sheriff, &c. in Wales, &c. shall hold persons to special bail, unless cause of action be 20*l.*

'II. And whereas the holding of persons inhabiting within the said principality of *Wales*, and counties palatine, to special bail in small actions, is oppressive and vexatious to the subject:' For remedy whereof, Be it further enacted by the authority aforesaid, That no sheriff or other officer within the said principality or counties palatine, upon any writ or process issuing out of any of his Majesty's courts of record

No. XXXIX. 11&12W.III c. 9.

at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court, out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds and upwards, bail shall not be taken for more than the sum expressed in such affidavit.

[No. XL.] 4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

[Given at length Vol. I.]

4 Anne, c. 16. Act to extend to all suits for the King's debts, &c.

XXIV. AND be it further enacted by the authority aforesaid, That from and after the said first day of *Trinity* term, this Act, and all the statutes of jeofails, shall extend to all suits in any of her Majesty's courts of record at *Westminster*, for recovery of any debt immediately owing, or any revenue belonging to her Majesty, her heirs or successors: and shall also extend to all courts of record in the counties palatine of *Lancaster*, *Chester*, and *Durham*, and the principality of *Wales*, and to all other courts of record within the kingdom.

[No. XLI.] 8 George I. c. 25.—An Act for supplying some defects in the Statute of the Twenty-third of King *Henry* the Eighth, intituled, "An Act for obligations to be taken by two Chief Justices, the Mayor of the Staple, and the Recorder of *London*, and for setting down the time of signing Judgments in the Principality of *Wales* and Counties Palatine.

[The former part of this supra.]

8 Geo. I. c. 25. 29 Car. 2. c. 3. s. 14.

'VI. AND whereas the provision which by an Act of Parliament made in the twenty-ninth year of the reign of King *Charles* the Second, intituled, "An Act for preventing of frauds and perjuries," was made for setting down the day of the month and year of signing judgments in his Majesty's courts of *Westminster*, hath proved very beneficial to purchasers, but hath not yet been extended to the courts of the principality of *Wales*, or of the counties palatine:' Be it therefore enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, One thousand seven hundred and twenty-two, any judge or officer of any of the courts of Great Session in the principality of *Wales*, or courts of session in the counties palatine of *Chester*, *Lancaster* and *Durham*, that shall sign any judgments, shall at the signing the same, without fee for doing the same, set down the day of the month and year of his so doing, upon the paper, book, docket or record which he shall sign, which day of the month and year shall be also entered upon the margent of the roll of the record where the said judgment shall be entered, and that such judgments, as against purchasers *bona fide* for valuable consideration of lands, tenements or hereditaments to be charged thereby, shall in consideration of law be judgments only from such times as they shall be so signed, and shall not relate to the first day of the session whereof they are entered, or the day of the return of the original or filing the bail; any law, usage, or course of any court to the contrary notwithstanding.

How judgment shall be signed in the Courts of the Grand Sessions in Wales, and in the courts of sessions in the counties palatine, and from what time they shall relate.

[No. XLII.] 6 George II. c. 14.—An Act for the more effectual preventing frivolous and vexatious Arrests, and for the more easy Recovery of Debts and Damages, in the Courts of Great Sessions in the Principality of

No. XLII. 6 George II. c. 14.

Wales, and in the Court of Assize in the County Palatine of *Chester*, and for the obviating a Doubt which has arisen upon an Act made in the Fourth Year of His present Majesty's Reign, intituled, "An Act that all Proceedings in Courts of Justice, within that part of *Great Britain*, called *England*, and in the Court of Exchequer in *Scotland*, shall be in the *English* language," so far as the same Act doth or may relate to the Courts of Justice holden within the said Principality, and for explaining and amending the said Act.

'WHEREAS in and by an Act made in the fifth year of his present Majesty's reign, intituled, "An Act to explain, amend and render more effectual an Act made in the twelfth year of the reign of his late Majesty, King *George* the First, intituled, "An Act to prevent vexatious arrests," it is *(inter alia)* enacted, That where the cause of action should not amount to the sum of ten pounds or upwards, in any superior court, the writ, process, declaration and all other proceedings should be in the *English* tongue, and written in words at length, in a common legible hand and character, and the defendant or defendants in such cases (a copy of such process in *English* having been served, as by the said Act is directed) shall appear at the return thereof, or within eight days after such return: And whereas the courts of Great Sessions in the principality of *Wales*, and the court of assize in the county palatine of *Chester*, are held only for and during the space of six days,' Therefore for the more effectual and speedy determination of all actions personal, to be commenced in the said courts of Great Sessions, and the said court of assize respectively, where the debt or damages expressed in the said process, or declared for, do not amount to the sum of ten pounds, Be it enacted therefore by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all such personal actions where the debt or damages as aforesaid, shall not amount to the sum of ten pounds, to be commenced in the said courts of Great Sessions and assize, and where the plaintiff or plaintiffs, in such action or actions, shall sue out an original writ or process, and serve the defendant or defendants with a true copy thereof, by a literate person, at least eight days before the commencement of the said courts of Great Sessions and assize respectively, and shall cause on every copy of such process to be written the notice in the said Act specified and directed, the defendant or defendants in such cases shall appear at the return of such original writ or process, or at or before the third court to be held in the same respective courts of Great Sessions and assize, and in case the said defendant or defendants, shall not appear at the return of the said original writ or process, or at or before the said third court, that then it shall and may be lawful to and for the plaintiff or plaintiffs, or his or their attorney, upon affidavit being made and filed in the proper court, of the personal service of such writ or process as aforesaid (which said affidavit shall be filed in the said court, and for the filing whereof there shall be paid the sum of one shilling to the proper officer, and no more) to enter an appearance for such defendant or defendants, and to proceed thereon as if the defendant or defendants had entered his, her, or their appearance to such action or actions; any law or usage in the said courts of Great Sessions or of assize to the contrary notwithstanding.

6 Geo. II. c. 14. 5 Geo. 2. c. 7. 12 Geo. 1. c. 29.

In personal actions under 10*l.* an original writ and service, &c.

and defendant's non-appearance at the third court.

Plaintiff, &c. on affidavit of service, may enter appearance for him.

II. Provided always, no attorney, bailiff or other person shall have, take, charge or demand more than the sum of five shillings for the making and serving a copy of such original writ or process issuing out of such courts of Great Sessions or of assize, on such defendant or defendants respectively as aforesaid.

5*s.* only for copy and service.

No. XLII. 6 George II. c. 14.

'III. And whereas doubts have arisen whether an Act made in the 'fourth year of his present Majesty's reign, intituled, "An Act that all 'proceedings in courts of justice within that part of *Great Britain* called '*England*, and in the court of Exchequer in *Scotland*, shall be in the '*English* language," doth extend to the said courts of Great Sessions 'and other courts in the principality of *Wales*, the said courts of 'Great Sessions, and the said other courts in the said principality, not 'being therein mentioned:' For the removing and obviating of such doubts, Be it further enacted, and it is hereby declared, That the said last mentioned Act, and all clauses and directions therein, shall be deemed and taken, and is and are hereby directed to be deemed and taken to extend to the said courts of Great Sessions, and all other courts within the said principality of *Wales*, in as large, ample and beneficial a manner as if the said courts of Great Sessions, and the said other courts in the said principality had been particularly mentioned and expressed in the said Act.

4 Geo. 2. c. 26. extended to Wales.

IV. And it is hereby further enacted, That where any person or persons shall offend against the said last mentioned Act in the said courts of Great Sessions, or the said other courts in *Wales*, that the penalty expressed in the said Act to be forfeited and paid for such offence, shall and may be sued for and recovered by such person who shall sue for the same, by action of debt, bill, plaint or information, either in any of his Majesty's courts of record in *Westminster*, as by the said Act is directed, or in the court of Great Sessions held for the county where the same offence shall be committed, wherein no essoign, protection or wager of law, or more than one imparlance shall be allowed.

Penalties for offences there against the said Act, where to be recovered.

V. And be it further enacted by the authority aforesaid, That all writs, process and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of courts leet, courts baron and customary courts, and all copies thereof, and all proceedings whatsoever, in any courts of justice within *England*, *Wales*, and the town of *Berwick-upon-Tweed*, and in the court of Exchequer in *Scotland*, and which concern the law and administration of justice, may from and after the twenty-fifth day of *March*, One thousand seven hundred and thirty-three, be written or printed, in a common legible hand and character, and with the like way of writing or printing, and with the like manner of expressing numbers by figures, as have been heretofore or are now commonly used in the said courts respectively, and with such abbreviations as are now commonly used in the *English* language, and that no penalty or punishment shall be incurred, by virtue of the said recited Act, for any other offence than for writing or printing any of the proceedings, or other the matters and things abovementioned, in any hand commonly called *court hand*, or in any language except the *English* language; nor shall any such penalty or punishment be extended to the expressing the proper or known names of writs or other process or technical words in the same language as hath been commonly used, so as the same be written or printed in a common legible hand and character, and not in any hand commonly called *court hand*; and that all prosecutions for offences against the said Act shall be commenced within three months after the same shall be committed; and that the several officers in the several offices of the King's and the lord treasurer's remembrancer, and in the offices of the clerk of the pipe, and the clerk of estreats in his Majesty's Court of Exchequer, shall and may write and send out, in process for his Majesty's service, rolls or schedules of all such debts as have been forfeited and became due and owing to his said Majesty, before the said twenty-fifth day of *March*, One thousand seven hundred and thirty-three, in the same manner they used to do, provided the writ or process to be annexed to the said rolls or schedules shall be in

No penalty to be incurred for abbreviations, nor technical terms, &c.

Prosecutions within three months.

Process of the pipe office, &c. may be issued as formerly.

the *English* tongue, and in a common legible hand, and according to the direction of the said recited Act: any thing in the said Act made in the fourth year of his present Majesty's reign, or any other law or statute to the contrary thereof in any wise notwithstanding. No. XLII. 6 George II. c. 14.

[No. XLIII.] 6 George II. c. 37.—An Act for making perpetual the several Acts therein mentioned; for the better Regulation of Juries; and for empowering the Justices of Session or Assizes for the Counties Palatine of Chester, Lancaster, and Durham, to appoint a Special Jury in Manner therein mentioned; and for continuing the Act for regulating the Manufacture of Cloth in the West Riding of the County of *York* (except a Clause therein contained); and for continuing an Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise, and for other purposes therein mentioned; and to prevent the cutting or breaking down the Bank of any River or any Sea Bank; and to prevent the malicious cutting of Hop-binds; and for continuing an Act made in the Thirteenth and Fourteenth Years of the Reign of King *Charles* the Second, for preventing Theft and Rapine upon the Northern Borders of *England*; and for reviving and continuing certain Clauses in two other Acts made for the same purpose.

[See Class IX. No. 63.]

[No. XLIV.] 17 George II. c. 7.—An Act for taking and swearing affidavits to be made use of in any of the Courts of the County Palatine of *Lancaster*.

17 George II. c. 7.

'WHEREAS it hath been found inconvenient, That no person or persons is or are empowered to grant commissions for the taking and swearing of affidavits, to be read and made use of in the Court of *Chancery* of and for the county palatine of *Lancaster*, and in the courts of session held in and for the said county palatine before his Majesty's justices, as well of pleas of the crown, as of Common Pleas, and all manner of pleas whatsoever within the said county palatine, in the several matters and causes depending in the said courts respectively;' For remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the chancellor of the duchy, and county palatine of *Lancaster*, or his vice-chancellor of the said county palatine, for the time being, shall and may, by one or more commission or commissions under the seal of the said county palatine, from time to time, as need shall require, empower what and as many persons as shall be thought fit and necessary to take and swear all and every such affidavit and affidavits, as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending, or hereafter to be depending, or any wise concerning any of the proceedings to be in any of the said courts, as masters of *Chancery* in extraordinary do use to do; which said affidavits taken as aforesaid, shall be filed in the several and respective offices of the said courts the same do concern:

Chancellor of the duchy may give commissions to take affidavits.

No. XLIV. 17 Geo. II. c. 7.

and the same shall and may be read and made use of in the said respective courts, to all intents and purposes, as other affidavits taken in the said courts now are; and that all and every affidavit and affidavits taken as aforesaid, shall be of the same force as affidavits taken in the said respective courts now are; and all and every person and persons forswearing him, her or themselves in such affidavit or affidavits, shall incur and be liable unto the same penalties, as if such affidavit or affidavits had been made and taken in open court: Which said commissions shall be made out by the cursitors of the said county palatine, upon a fiat or warrant from the said chancellor or vice-chancellor; and the said cursitors shall cause entries to be made in a book to be kept for that purpose, of the names of the persons to whom such commissions are from time to time granted, and the respective times when issued; and the following fees shall be paid for each commission, and no more; to wit, the sum of two shillings for the fiat or warrant, the sum of four shillings for making out the said commission, besides the King's duty, and the value of the parchment, and the sum of four shillings for sealing the same; and every commissioner, or person so empowered, shall take and receive for the swearing of every affidavit before him, the sum or fee of one shilling and no more.

Fees for taking commissions.

Proviso.

Provided always, and it is hereby declared, That such officers of the said courts respectively as have heretofore taken or sworn affidavits, shall and may continue so to do in the same manner as if this Act had not been made.

[No. XLV.] 20 George II. c. 42.—An Act to enforce the Execution of an Act of this Session of Parliament, for granting to his Majesty several Rates and Duties upon Houses, Windows, or Lights.

[I. Commissioners who have omitted, empowered to meet and act at any other time.—Acts of the Commissioners confirmed.]

[II. Two Commissioners may appoint Assessors.—Persons neglecting to appear, or take the Oaths, or serve the office, to pay 5*l.*]

20 George II. c. 42.

III. AND it is hereby further declared and enacted by the authority aforesaid, That in all cases where the kingdom of *England*, or that part of *Great Britain* called *England*, hath been or shall be mentioned in any Act of Parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the dominion of *Wales*, and town of *Berwick-upon-Tweed*.

Wales and Berwick included.

[IV. Quakers appointed Assessors, to make and subscribe the Declaration of Fidelity.—Certificates verified upon Affirmation to be valid.]

[No. XLVI.] 22 George II. c. 46.—An Act to continue several Laws * * * * * * * * * * * and for the more frequent Return of Writs in the Counties Palatine of Chester and Lancaster; and for other purposes.

22 George II. c. 46.

'XXXV. WHEREAS all writs relating to actions depending in the court of session of *Chester*, or in the Court of *Common* '*Pleas*, held in and for the county palatine of *Lancaster*, are returnable 'at the Great Sessions and sessions of assizes held respectively for the 'said counties, and at no other time, by which means no action that is 'commenced in the said courts can be brought to issue, and tried, be'fore the next session or session of assizes but one after such action is 'commenced at the soonest, which is usually near a year, and a great 'delay to the suitors of the said courts, and many other inconveniences 'do attend the want of more frequent returns of writs in the said 'courts:' For remedy whereof, and for the greater ease and benefit of the suitors in the same, Be it further enacted by the authority aforesaid,

No. XLVI. 22 Geo. II. c. 46.

Regulations in the returns of writs in the court of session of Chester, and the court of Common Pleas of Lancaster.

That from and after the twenty-ninth day of *September*, One thousand seven hundred and forty-nine, all writs of *capias*, and other mesne process, to answer relating to any action or suit, to be brought or commenced in the said courts of session for the said county of *Chester*, and Court of *Common Pleas* for the said county of *Lancaster*, that shall bear teste in the preceding session or sessions of assizes respectively, shall and may be made returnable before his Majesty's justices of the said sessions at *Chester*, or sessions of assizes for the county of *Lancaster*, on the first *Wednesday* of any month in each of the two vacations annually, betwixt the said session or sessions of assizes, or at the first day of the next session or sessions of assizes respectively, at the election of the plaintiff or plaintiffs, his, her, or their attorney, who shall sue out the same; and that all such writs or process, which shall issue out of the said courts respectively, returnable in the vacations, as aforesaid, and whereon or wherewith the defendant or defendants shall be arrested or served with a copy or copies, such defendant or defendants shall appear and file special bail, or enter a common appearance, as the case shall require, on the day of such return, or within eight days next after; and in case of neglect in bailable actions, the sheriff, under-sheriff, or other officer, shall at the request and costs of the plaintiff or plaintiffs, in such action or suit, his, her, or their attorney or agent, assign to such plaintiff or plaintiffs, the bail bond taken for the defendant's appearance upon the arrest, by indorsement and attestation under his hand in the presence of two or more credible witnesses; and the plaintiff or plaintiffs in such action, after such assignment made, may bring an action or suit upon such bail bond, in his or their own name or names; and the said courts may, by rule or rules thereof respectively, give such relief to the plaintiffs and defendants in the original action, and to the bail, so sued upon the bail bond, as is agreeable to justice and reason; and in case of service, the copy of writs or process, returnable in the vacation time as aforesaid, and the defendant or defendants so served therewith, shall not appear at the return of such writ or process, or within eight days next after the return thereof as aforesaid, it shall and may be lawful to and for the plaintiff or plaintiffs, in such action, upon affidavit being made and filed with the prothonotary of the said courts respectively, or his deputy, of the personal service of such process as aforesaid, to enter a common appearance or appearances for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his, her, or their appearance; and that all writs which shall be made returnable in the said courts respectively, on such return days as aforesaid, shall and may (in case the plaintiff or plaintiffs declare according to the practice of the said courts respectively), be proceeded upon in like manner as if the same had been made returnable at the preceding session or session of assizes for the said counties palatine respectively; any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding.

[No. XLVI. a.] 4 Geo. III. c. 21.—An Act for taking and swearing Affidavits to be made use of in any of the Courts of the County Palatine of *Durham*.

4 George III. c. 21. Preamble.

WHEREAS it hath been found very inconvenient, that no person or persons is or are empowered to grant commissions for the taking and swearing of affidavits to be read and made use of in the Court of Chancery of and for the county palatine of *Durham*, and in the court of session of pleas held in and for the said county palatine of *Durham*, before his Majesty's justices as well of Pleas of the Crown as of Common Pleas, and all manner of pleas whatsoever within the said county palatine of *Durham*, in the several matters and causes depending in the said courts respectively; for remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of

No. XLVI. a 4 Geo. III. c. 21.

The Chancellor, and justices of the Court of Pleas, empowered to issue commissions to proper persons to take and swear affidavits in causes depending in their respective courts.

The affidavits to be filed in the proper courts, and read in evidence.

Penalty of forswearing.

Cursitor to make out the commissions, upon a fiat from the chancellor; and fiat from two justices of the Pleas; and make an entry thereof; his fees for each commission.

Commissioners fees for swearing affidavits.

Officers of the respective courts empowered to take affidavits as heretofore.

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the Chancellor of the county palatine of *Durham* for the time being, the justices of the Court of Pleas in and for the said county palatine for the time being, or any two of them in their session of pleas, shall and may, by one or more commission or commissions under the several seals of the said respective Courts of Chancery and Court of Pleas in and for the said county palatine of *Durham*, from time to time, as need shall require, empower what and as many persons as shall be thought fit and necessary, to take and swear all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter, or thing, depending, or hereafter to be depending, or any wise concerning any of the proceedings to be in either of the said Courts of *Chancery*, or Court of *Pleas*, in and for the said county palatine of *Durham*, as Masters in *Chancery* in extraordinary do use to do; which said affidavits, taken as aforesaid, shall be filed in the several and respective offices of the said Court of *Chancery*, and the Court of *Pleas*, in and for the said county palatine of *Durham*; and the same shall and may be read and made use of in the said respective courts, to all intents and purposes, as other affidavits taken in the said courts now are: And that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said respective courts now are: And all and every person and persons forswearing him, her, or themselves, in such affidavit or affidavits, shall incur and be liable unto the same penalties, as if such affidavit or affidavits had been made and taken in open court: which said several commissions shall be made out by the cursitor of the said county palatine of *Durham*, upon a fiat or warrant from the said chancellor of the said county palatine of *Durham*, for taking affidavits in the said Court of *Chancery*; and upon a fiat or warrant from any two of the justices of the pleas, in their session of pleas, in and for the said county palatine of *Durham*, for taking affidavits in the said Court of *Pleas*: And the said cursitor shall cause an entry to be made, in a book to kept for that purpose, of the names of the persons to whom such commissions are from time to time granted, and the respective times when issued: And the following fees shall be paid for each commission, and no more (to wit) The sum of two shillings for the fiat or warrant; the sum of four shillings for making out the said commission, besides the King's duty, and value of the parchment; and the sum of four shillings for sealing the same: And every commissioner or person so empowered shall take and receive, for the swearing of every affidavit before him in the said Court of *Chancery* of *Durham*, the sum or fee of two shillings, and no more; and for the swearing of every affidavit before him in the said Court of *Pleas*, in and for the said county palatine of *Durham*, the sum or fee of one shilling, and no more.

Provided always, and it is hereby declared, That such officers of the said respective Courts of *Chancery*, and Court of *Pleas*, in the said county palatine of *Durham*, as have heretofore taken or sworn affidavits, shall and may continue so to do, in the same manner as if this Act had not been made.

[No. XLVII.] 13 George III. c. 51.—An Act to discourage the Practice of commencing frivolous and vexatious suits in his Majesty's Courts at *Westminster*, in Causes of Action arising within the dominion of *Wales*; and for further regulating the Proceedings in the Courts of Great Sessions in *Wales*.

13 George III. c. 51.

'WHEREAS, to the intolerable vexation and charge of his Majesty's subjects in the dominion of *Wales*, it hath been the practice to

'commence trifling and frivolous suits in the Courts at *Westminster*, upon 'causes of action arising within the said dominion of *Wales*: (1) In order 'that the same may be tried in the nearest adjoining *English* county to 'that part of the dominion of *Wales* in which the cause of action has arisen, 'to discourage the like practices for the future;' may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of *January*, One thousand seven hundred and seventy-four, in case the plaintiff in any action upon the case for words, action of debt, trespass on the case, assault and battery, or other personal (2) action, where the cause of such action shall arise within the dominion of *Wales*, and which shall be tried at the assizes, at the nearest *English* county (3) to that part of the said dominion of *Wales*, in which the cause of action shall be laid to arise, shall not recover, by verdict, a debt or damages to the amount of ten pounds; in such case, if the judge who tried the cause on evidence appearing before him, shall certify on the back of the record of *Nisi Prius*, that the defendant or defendants was or were resident in the dominion of *Wales* at the time of the service of the writ, or other mesne process served on him, her, or them, in

In case plaintiff shall recover damages to amount of 10*l.*; defendant shall be intitled to judgment and remedy thereon, &c.

(1) The origin of the courts of Westminster assuming jurisdiction over causes in Wales, and directing the trial in an adjoining English county, does not distinctly appear; I think the truth most probably is, that it was founded in mere usurpation, and, like many other usurpations of jurisdiction, supported by fictions; but the practice has actually existed for a great length of time, and is in many respects very beneficial.

The right of issuing a *latitat* into Wales has been the subject of considerable controversy. In Lempley *v.* Thomas, 1 Wils. 193, the question was raised by demurrer, and was argued three times: during the progress of the arguments the court seemed sufficiently disposed to adhere to the jurisdiction, but finally decided against it, without saying more than these words—"*Breve domini regis de latitat non currit in Walliam.*" In Mr. Hargreave's Law Tracts, p. 377, there is a very learned and elaborate argument, occasioned by the discussion of this case, and apparently written before the decision of it, in opposition to the jurisdiction. In Lloyd *v.* Jones, Doug. 213, n. upon a subsequent discussion of the question, Yates J. intimated a decided opinion in favour of the jurisdiction of the court: but the case stood over to be argued again; when the defendant declining (in all due courtesy) a further argument, judgment was given for the plaintiff.

And in Penny *v.* Jones, Doug. 213, application being made for a rule to shew cause why an *exoneretur* should not be entered on the bail-piece, the defendant having been arrested in Wales, the court refused the rule, saying, that the proper way, if the court had not jurisdiction, was to plead in abatement; and Buller said, that since the case in Wilson the contrary doctrine had been held in several cases, particularly in the case already mentioned, where Yates J. had considered the case very fully, and delivered a solemn argument upon it. The reporter observes, that the present Act seems very clearly to recognize the jurisdiction, which is certainly the case, however disputable in point of argument, independently of such recognition, the question might have been. In Ambrose *v.* Rees, 11 East, 370, the court refused to set aside a trial at Monmouth, on a venue in South Wales, for irregularity; assigning as a reason, that the defendant did not object at the time; but in Goodright ex. dem. Richards *v.* Williams, 2 M. & S. 270, the court arrested the judgment, after a trial in Salop, upon a venue in Cardiganshire, upon the ground that the practice had always been to consider Herefordshire as the next adjoining county to South Wales, and Salop to North Wales. This decision has always appeared to me to stand on very unsatisfactory grounds, in treating that which had been a mere course and habit of practice, as a rule of law; a thing which the courts themselves have in some instances strongly objected to. The venue is also directed into the particular county upon a suggestion of its being the adjoining county as a matter of fact; and it is perfectly anomalous to treat the same subject as one which is to be stated upon suggestion as matter of fact, and also as one which is to be judicially recognized as matter of law. The fact of its being general to try issues in South Wales in the county of Hereford may be sufficiently accounted for from that being, in fact, the nearest county to a great part of South Wales, as Salop is confessedly the nearest county, into which the King's writ runs, to the greater part of North Wales: but, at any rate, a deviation from an established course of practice would, in such case, have been more regularly corrected by an application to a judge, than by treating it as an error upon the record.

(2) Covenant for not levying a fine is a personal action within the Act; Davis *v.* Jones, 1 N. R. 267.

(3) This extends to an attorney suing by attachment of privilege, although he might have exercised his privilege by laying the venue in Middlesex; Evans *v.* Jones, 6 T. R. 500.

No. XLVII. 13 Geo. III. c. 51.

such action, on such fact being suggested on the record or judgment roll, a judgment of nonsuit shall be entered against the plaintiff, and such defendant or defendants shall be entitled to, and have like judgment and remedy thereon, to recover such and the like costs, against the plaintiff or plaintiffs, in every such action, as if a verdict had been given by the jury for the defendant or defendants, unless the judge, before whom such cause shall be tried, shall certify on the back of the record, that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question, or that such cause was proper to be tried in such *English* county.

Actions within Wales brought in Courts of record out of the said principality, &c.

II. And, in order to prevent transitory actions, where the cause of action does not amount to ten pounds, arising within the principality of *Wales*, from being brought in any of his Majesty's Courts of Record out of the said principality, be it further enacted, That in all transitory actions arising within the said principality, which from and after the first day of *January*, One thousand seven hundred and seventy-four, shall be brought in any of his Majesty's courts of record out of the said principality of *Wales*, and the venue therein, shall be laid in any county or place out of the said principality, and the debt or damages found by the jury shall not amount to the sum of ten pounds, and it shall appear upon the evidence given on the trial of the said cause that the cause of action arose in the said principality of *Wales*, and that the defendant or defendants were resident in the dominion of *Wales* at the time of the service of any writ, or other mesne process served on him, her, or them, in such action, and it shall be so certified, under the hand of the judge who tried such cause, upon the back of the record of *Nisi Prius* (on such facts being suggested on the record or judgment roll), a judgment or nonsuit shall be entered thereon against the plaintiff, and the plaintiff or plaintiffs shall pay to the defendant or defendants, in such action, his or their costs of suit; and the defendant and defendants shall have like remedy to recover the same as in the case of a verdict given for the defendant or defendants in such action; and, in the taxation of all costs allowed and given to the defendant or defendants by and in pursuance of this Act, the proper officer shall allow to the plaintiff or plaintiffs, out of the defendant's costs, the full sum given by the verdict to the plaintiff or plaintiffs for his or their debt or damages; and, although no judgment shall be entered for the plaintiff or plaintiffs upon such verdict, yet nevertheless such verdict, without any judgment entered thereon, shall be an effectual bar to any action or actions commenced by the plaintiff or plaintiffs for the same.

34 & 35 H. 8.

'III. And whereas by an Act made in the thirty-fourth and thirty-fifth 'years of the reign of his late Majesty King *Henry* the Eighth, intituled, "An Act for certain ordinances in the King's dominion and 'principality of *Wales*," it is (amongst other things) enacted, That there 'shall be holden and kept sessions, twice in every year, in every of the 'shires of the said dominion and principality of *Wales*, the which sessions shall be called "The King's Great Sessions in *Wales*;" and that 'the justice of *Chester* shall hold and keep sessions, twice in every year, 'in the shires of *Denbigh*, *Flint*, and *Montgomery*; and likewise that 'the justice of *North Wales* shall hold and keep sessions, twice in every 'year, in the shires of *Caernarvon*, *Merioneth*, and *Anglesey*; and also 'that one person learned in the laws of this realm, by the King's Majesty to be named and appointed, shall be justice of the shires of *Radnor*, *Brecknock*, and *Glamorgan*; and shall likewise hold and keep 'sessions, twice in every year, in every of the same shires; and likewise that one other person, learned in the laws of this realm, to be 'appointed as aforesaid, shall be justice of the shires of *Caermarthen*, *Pembroke*, and *Cardigan*, and shall in like wise hold and keep sessions, 'twice in every year, in every of the same shires: and that the said 'persons, or justices, and every of them, then being, or that hereafter 'shall be, shall have several letters patents and commissions for their 'offices under the King's Great Seal of *England*, to be exercised by 'themselves, or their sufficient deputies, according to the purposes and

'intents in the said ordinances specified: And whereas by one other 'Act, made in the eighteenth year of the reign of her late Majesty 'Queen *Elizabeth*, intituled, "An Act for the appointing of justices 'in the shires of *Wales*," it is (amongst other things) enacted, That the 'Queen's Highness, her heirs and successors may and shall have full 'power and authority, from time to time, to constitute, name, or ap- 'point, two or more persons, learned in the laws of this realm of *Eng- 'land*, to be justices of and for the said counties of *Chester*, *Flint*, *Den- 'bigh* and *Montgomery*; and two or more, learned as aforesaid, to be 'justices of *North Wales*; (*videlicet*,) of and for the said shires of '*Anglesey*, *Caernarvon*, and *Merioneth*; and likewise two or more, 'learned as aforesaid, to be justices of and for the circuits and shires of '*Radnor*, *Glamorgan*, and *Brecknock*; and also two or more, learned as 'aforesaid, to be justices of and for the circuits and shires of *Cardigan*, '*Caermarthen*, *Pembroke*, and the town and county of *Haverford West*: 'And whereas the exercising the power of appointing deputies by such 'justices may be attended with inconvenience; for preventing thereof:' be it further enacted, That no justice now appointed, or at any time hereafter to be appointed, of or for the said county of *Chester*, or of or for any county, circuit, or shire, within the said principality or dominion of *Wales*, shall have any power or authority of exercising his office by deputy, save and except for the purpose of calling and adjourning any court or courts, and receiving any motion or motions appointed, or especially directed to be made at such court, and for the further purpose of taking and proclaiming fines and arraigning recoveries, in such court or courts of each respective great session and assizes, within the circuit of such justice: any law, statute, or usage to the contrary notwithstanding.

18 Elizabeth.

Welsh justices not to have a deputy, &c.

IV. Provided always nevertheless, and be it further enacted by the authority aforesaid, That from henceforth it shall and may be lawful to and for the several and respective justices of and for the said several and respective circuits and counties for the time being, from time to time, and at any time, as occasion may require, by writing under the hand and seal, or hands and seals, of such justice or justices respectively, to nominate, constitute, or appoint, any person or persons to be his or their deputy or deputies, for the intent and purpose of calling and adjourning any court or courts, and receiving any motion or motions, appointed or especially directed to be made at such court, and for the further purpose of taking and proclaiming fines, and arraigning recoveries in such court or courts of each respective great session and assizes, within their several and respective circuits and counties aforesaid, which person or persons so appointed shall have full power and lawful authority so to do.

V. Provided always, and be it further enacted, That his Majesty, his heirs and successors, shall and may, under his and their royal sign manual, appoint one or more person or persons, learned as aforesaid, to execute the said office of justice in the said county palatine of *Chester*, or in any of the said counties of *Wales*, for the then next ensuing great sessions, in the place and stead of any of the said justices, who shall, by illness, be prevented attending upon such great sessions, and so often as the necessity of the case shall require; any law, usage, or custom to the contrary thereof in any wise notwithstanding.

'VI. And whereas it is conceived that the suitors in the court of the 'King's great sessions in the dominion and principality of *Wales* will, in 'many cases, experience great benefit and advantage by having their 'suits tried by special juries;' be it therefore further enacted by the authority aforesaid, That the justices of his Majesty's great sessions in *Wales*, upon motion made on behalf of his Majesty, his heirs or successors, or on motion of any prosecutor or defendant in any indictment or information of any misdemeanour, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause or suit whatsoever, depending, or to be brought and carried on, in any of his Majesty's courts of great sessions in *Wales*, shall and may, in case such

Special juries may be struck as in the courts at Westminster.

No. XLVII. 13 Geo. III. c. 51.

justices in their discretion shall think fit, order and appoint a jury to be struck before the proper officer of such courts, for the trial of any issue joined in any of the said cases, in such manner as special juries have been usually struck in the courts of law at *Westminster*, upon trials at bar had in the said courts; which jury, so struck as aforesaid, shall be the jury returned for the trial of such issue as aforesaid.

VII. Provided always, and be it further enacted by the authority aforesaid, That the person or party who shall, by virtue of this Act, apply for such special jury shall not only bear and pay the fees for striking such jury, but shall also bear, pay, and discharge all the expenses occasioned by the trial of the cause by such special jury, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury, unless the justices or justice before whom the cause is tried shall, immediately after the trial, certify in open court, under his or their hand or hands, upon the back of the record, that the same was a cause proper to be tried by a special jury.

1*l.* 1*s.* for such service.

'VIII. And to prevent the demand or payment of extravagant fees of 'jurymen returned under the authority of this Act,' be it further enacted by the authority aforesaid, That no person who shall serve upon any jury, appointed or returned by authority of this Act, shall be allowed, or take, for serving on any such jury, more than the sum of money which the justices or justice who tries the issue or issues shall think just and reasonable, not exceeding the sum of one pound one shilling, except in causes where a view hath been or shall be directed.

'IX. And, for greater ease and benefit of all persons whomsoever in 'the taking of affidavits to be made use of and read in the courts of his 'Majesty's great sessions in *Wales*, in all matters and causes whatsoever 'depending, or to be depending, in all or any of the courts aforesaid, or 'in anywise concerning the proceedings of or in the same,' be it enacted by the authority aforesaid, That the justices of the respective courts of great sessions in *Wales* for the time being shall and may, by one or more commission or commissions, under the seal of the said respective courts, from time to time, as need shall require, empower such and so many persons as they shall think fit and necessary, in all and every the several shires and counties within their respective circuits in the said dominion of *Wales*, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered in, or concerning any cause, matter, or thing depending, or hereafter to be depending, or in anywise concerning any of the proceedings to be in their respective circuits of great sessions, as the justices of his Majesty's Court of King Bench, or Common Pleas, or the Lord Treasurer, Chancellor, and Barons of the Court of Exchequer for the time being, do use to do; which said affidavits, taken as aforesaid, shall be filed in the several and respective offices of the said several and respective courts of great sessions, and the same shall and may be read and made use of in the said respective courts to all intents and purposes, as other affidavits taken in the said respective courts now are; and that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said respective courts now are; and all and every person and persons forswearing him, her, or themselves, in such affidavit or affidavits, shall incur and be liable unto the same penalties, as if such affidavit or affidavits had been made and taken in open court; which said several commissions shall be made out by the prothonotary, upon a fiat or warrant from the said justices for the time being of the said respective courts of great sessions in *Wales*; and the said prothonotary shall cause an entry to be made in a book to be kept for that purpose of the names of the persons to whom such commissions are, from time to time, granted, and the respective times when issued; and the following fees shall be paid for each commission, and no more; *(to wit)*, the sum of two shillings for the fiat or warrant; the sum of four shillings for making out the said commission, besides the King's duty, and value of the parchment; and the sum of four shillings for sealing

Justices may empower persons to take affidavits, &c.

the same; and every commissioner, or person so empowered, shall take and receive, for the swearing of every affidavit before him, the sum or fee of one shilling, and no more.

X. Provided nevertheless, That no person appointed a commissioner as aforesaid shall take or receive any affidavit during the time of holding the great sessions, or assizes, for the county or place in which such cause, matter, or thing, shall be depending.

XI. Provided always, and it is hereby enacted, That such officers of the said several and respective courts of great sessions in *Wales*, as have heretofore taken or sworn affidavits, shall and may continue so to do, in the same manner as if this Act had not been made; any thing herein contained to the contrary notwithstanding.

'XII. And, to give greater ease and benefit to all persons within the 'said dominion of *Wales*, in taking the recognizances of special bails 'upon all actions and suits depending, or to be depending in any of the 'courts of his Majesty's great sessions in *Wales*;' be it further enacted by the authority aforesaid, That the justices of the respective courts of great sessions in *Wales* for the time being shall and may, by one or more commission or commissions, under the seal of the said respective courts, from time to time, as need shall require, empower such and so many persons, (other than common attorneys or solicitors) as they shall think fit and necessary in all and every the several shires and counties within their respective circuits in the said dominion of *Wales*, to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered in any action or suit depending, or hereafter to be depending, in the said respective courts, or any of them, in such manner and form, and by such recognizance or bail piece, as the justices of the said courts of great sessions respectively have used to take the same; which said recognizance or recognizances, bail piece or bail pieces, so taken as aforesaid, together with an affidavit made of the due taking of the recognizances of such bail or bail piece, by some credible person present at the taking thereof, shall be transmitted to the prothonotary's office, there to be filed of record, paying such fees as have usually been received for the taking of special bails by the justices clerks, and other officers of the said respective courts, which recognizance of bail or bail piece, so taken and transmitted, shall be of the like effect, as if the same were taken before any of the said justices; for the taking of every which recognizance or recognizances of bail or bail piece, the person or persons so empowered shall receive only the sum of, or fee of two shillings, and no more.

Justices of the courts of great sessions may empower persons to take recognizances of bail, &c.

XIII. And be it further enacted by the authority aforesaid, That the said justices of great sessions, in their respective courts, shall and may make such rules and orders, for the justifying of such bails, and making the same absolute, as to them shall seem meet, so as the cognizor or cognizors of any such bail or bails be not compelled to appear in person in any of the said courts, to justify him or themselves; but the same may be, and is hereby directed to be determined by affidavit or affidavits, duly taken before the said commissioners, touching the value of their respective estates.

Justices to make rules for justifying bail.

XIV. Provided always, That the attorney for the defendant or defendants shall give notice to the plaintiff's attorney of the taking of such bail within eight days after the caption thereof, and that the plaintiff shall be at liberty, within eight days after such notice, to take exception to such bail, and enter the same in the prothonotary's office; and such exception having been taken, the bail shall be justified before the justices, before the rising of the second court at the ensuing sessions; and the bail bond taken by the sheriff, under-sheriff, or other officer, for the defendant's appearance, shall remain in force until such special bail shall have been finally justified as aforesaid; but the plaintiff, nevertheless, shall be at liberty to file his declaration conditionally in the prothonotary's office; and the defendant, in case such declaration shall have been delivered seven days before the first day of the session next

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ensuing the return of such writs, shall plead thereto, before the rising of the second court of such great sessions, unless further time shall be given him by the court for that purpose.

'XV. And whereas all writs relating to actions depending in the 'courts of Great Sessions in the several counties in *North* and *South* '*Wales*, are returnable at the great session held respectively for the said 'counties, and at no other time, by which means no action that is com-'menced (except where the defendant or defendants voluntarily appear) 'can be brought to issue, and tried before the second session after such 'action is commenced at the soonest, which is usually near a year, and 'a great delay to the suitors of the said courts;' For remedy whereof, and for the greater ease and benefit of the said suitors, Be it further enacted by the authority aforesaid, That from and after the first day of *January*, One thousand seven hundred and seventy-four, all original writs, bills, and all mesne process whatsoever, by which any action shall be commenced or sued in the said courts of great sessions for the said counties of *North* and *South Wales*, shall and may be made returnable before his Majesty's justices respectively of the several counties of *North* and *South Wales*, on the first *Wednesday* in any month, in each of the two vacations, annually, betwixt the two sessions, or on the first day of the next sessions, at the election of the plaintiff or plaintiffs, his, her, or their attorney, who shall sue out the same: and that all such writs or process which shall issue out of the said courts, returnable in the vacations as aforesaid, and whereon or wherewith the defendant or defendants shall be arrested or served with a copy or copies, such defendant or defendants shall appear and file special bail, or enter a common appearance, as the case shall require, on the day of such return, or within fourteen days next after; and in case of neglect in bailable actions, the sheriff, under-sheriff, or other officer shall, at the request and costs of the plaintiff or plaintiffs, in such actions, his, her, or their attorney, assign to such plaintiff or plaintiffs the bail-bond taken for the defendant's appearance upon the arrest, by indorsement and attestation under his hand, in the presence of two or more credible witnesses; and the plaintiff or plaintiffs in such action, after such assignment made, may bring an action or suit upon such bail-bond, in his, her, or their own name or names; and the said courts may, by rule or rules thereof respectively, give such relief to the plaintiff and plaintiffs, defendant and defendants, in the original action, and to the bail so sued upon the bail-bond, as is agreeable to justice and reason; and in case on service of the copy of any writ or process, (having notice thereunder written, purporting the intent of such service) returnable in the vacation time as aforesaid, the defendant or defendants so served therewith shall not appear at the return, or within fourteen days next after the return thereof, as aforesaid, it shall and may be lawful to and for the plaintiff or plaintiffs in such action, upon affidavit being made and filed with the prothonotary of the said respective courts, or his deputy, of the personal service of such writ or process as aforesaid, to enter a common appearance or appearances for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his, her, or their appearance; and special bail having been filed, or a common appearance entered, as the case shall require, the plaintiff in such action may proceed to file his declaration; and the defendant or defendants, in case such declaration shall have been delivered seven days before the first day of the session next ensuing the return of such writ, shall be bound to plead thereto, before the rising of the second court of such great session to be holden for the county or place in which such action shall have been brought, unless the court shall think proper to allow further time for that purpose.

Original writs, &c. returnable before the justices.

Original bills how to be signed.

XVI. And be it further enacted by the authority aforesaid, That from and after the first day of *January*, One thousand seven hundred, and from and after the first day of *January*, One thousand seven hundred and seventy-four, every officer or clerk belonging to the several courts of great sessions in the principality of *Wales*, who shall sign any ori-

ginal writ or bill, relating to actions depending in the said courts of great sessions, shall, at the signing thereof, set down upon such original writ or bill the day and year of his signing the same, which shall be entered upon the remembrance, or in the book where the abstracts of such original writ or bill shall be entered, upon pain to forfeit the sum of five pounds for every offence or neglect of such officer or clerk aforesaid; to be recovered by any person who shall sue for the same by action of debt, bill, plaint, or information, wherein no wager of law, protection or essoign, or more than one imparlance shall be allowed.

'XVII. And whereas by sundry statutes, penalties are given for 'offences thereby provided against, and such penalties are directed to 'be sued for and recovered in his Majesty's courts of *Westminster* only, 'and the enabling the respective courts of great sessions to hold pleas 'or to have cognizance in all such cases arising or happening within 'their respective jurisdictions, would be for the ease and benefit of the 'inhabitants of the dominion of *Wales*;' be it further enacted by the authority aforesaid, That from and after the first day of *January*, One thousand seven hundred and seventy-four, in all cases where any penalty or penalties is or are given by any statute, and the same is, are, or shall be directed to be recovered in the courts of *Westminster*, or either of them, excepting such as may by the laws now in being be sued for only in his Majesty's Court of Exchequer, and the offence for which any such penalty or penalties hath or shall be given, shall be done or committed in any of the counties of *Wales*, and the defendant or defendants liable to the same shall be resident within the jurisdiction of the great session held for any county of *Wales*, it shall and may be lawful to and for the plaintiff or plaintiffs, prosecutor or prosecutors, or other person to whom any such penalty is given, or who shall be entitled to sue for the same, in every such case, to sue for and recover the same in the courts of great session respectively in *Wales*, within which such penalties have or shall be incurred, in such manner and form as he, she or they might have done in the courts at *Westminster*; and that the said respective courts of great session shall have jurisdiction as fully to all intents and purposes as if the said courts had been respectively named in all and every of the said Acts, and the powers thereby given extended to the said respective courts.

Penalties given by statutes where to be sued and recovered.

[No. XLVIII.] 27 George III. c. 43.—An Act for taking and swearing affidavits to be made use of in the Court of Session of the County Palatine of *Chester*; and for taking of Special Bail in Actions and Suits depending in the same Court.

27 George III. c. 43.

'WHEREAS it hath been found inconvenient that no person or persons is or are empowered to grant commissions for the taking or 'swearing of affidavits, to be read and made use of in the Court of Session, otherwise called Great Session, for the county palatine of *Chester*, 'before his Majesty's justices of the said court, as well of pleas of the 'crown as of common pleas, and of all manner of pleas whatsoever, in 'the several matters and causes depending, or hereafter to be depending in the said court; and that the prothonotary of the said court for 'the time being, or his officiating deputy, have not power and authority to take and swear such affidavits, as aforesaid, and to take affidavits for the justification of special bails, taken in actions and suits in 'the said court; and also, that no person or persons is or are impowered to grant commissions for the taking of special bails in actions 'and suits in the said court; for remedy whereof,' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, the justices of the said court for the time

Preamble.

Justices of the court of session for the county palatine of Chester may

No. XLVIII. 27 Geo. III. c. 43.

being, or either of them, shall and may, by one or more commission or commissions under the seal of the said county palatine, from time to time, as need shall require, empower such and so many person or persons as they or either of them shall think fit or necessary, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing to make, before any of the persons so empowered, in or concerning any cause, matter, or thing, depending, or hereafter to be depending, or in any wise concerning any of the proceedings to be in the said court, as the justices of his Majesty's courts of King's Bench and Common Pleas, the Lord Treasurer, and the Chancellor and barons of the Court of Exchequer for the time being, or any of them, do use to do; and also that, from and after the passing of this Act, it shall and may be lawful for the prothonotary of the said court of session for the said county of *Chester* for the time being, or his officiating deputy *ex officio*, as officers of the same court, and without such commission or commissions as aforesaid, to take and receive all and every such affidavit and affidavits as aforesaid, in or concerning such causes, matters or things as aforesaid; which said affidavits, taken as aforesaid, shall be filed in the office of the prothonotary of the said county, and the same shall and may be read and made use of in the said court, to all intents and purposes, as other affidavits taken in the said court now are: and that all and every affidavit and affidavits, taken as aforesaid, shall be of the same force and effect as affidavits taken in the said court now are. And all and every person and persons forswearing him or themselves in such affidavit or affidavits, shall incur and be liable unto the same pains and penalties as he, she, or they would have incurred and been liable unto if such affidavit or affidavits had been made and taken in open court; which said several commissions shall be made out by the prothonotary of the said court of session, upon a fiat or warrant from the said justices for the time being, or one of them; and the said prothonotary shall cause an entry to be made in a book to be kept for that purpose, of the names of the persons to whom such commissions shall be from time to time granted, and of the respective times when such commissions shall be issued; and the following fees shall be paid for each commission and no more; (to wit) The sum of two shillings for the fiat or warrant; the sum of four shillings for making out the commission, besides the King's duty and the value of the parchment; and the sum of four shillings for sealing the same: And the said prothonotary, and his officiating deputy, and every commissioner, or person so empowered as aforesaid, shall take and receive for the swearing of each affidavit before him or them, the sum or fee of one shilling, and no more: Provided nevertheless, That neither any person appointed a commissioner as aforesaid, nor the said prothonotary or his deputy, shall take or swear any affidavit within one mile of the castle of *Chester* during the time of holding the session for the said county.

empower persons to take affidavits in causes depending therein.

Prothonotary or his deputy may take like affidavits, &c.

Persons forswearing themselves liable to the same penalties as for false affidavits in open court.

Manner of making out commissions for taking affidavits, &c.

Fees to be paid for such commissions, and for taking affidavits.

No affidavit to be taken within a mile of Chester Castle during the county session.

'II. And, to give greater ease and benefit to the persons residing 'within the said county palatine of *Chester*, in taking recognizances of 'special bail in all actions and suits depending or to be depending in 'the said court of session:' be it further enacted by the authority aforesaid, That the justices of the same court for the time being, or either of them, shall and may, by one or more commission or commissions under the seal of the said county palatine from time to time, as need shall require, empower such and so many person and persons (other than common attornies or solicitors) as they or either of them shall think fit and necessary in the said county palatine of *Chester*, to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing and desirous to acknowledge or make before any person so empowered in any action or suit depending, or hereafter to be depending in the said court, in such manner and form and by such recognizance or bail-piece as special bails are usually, or by law ought to be taken; which said several last-mentioned commissions shall be made out by the prothonotary of the said court upon a fiat or warrant from the said justices for the time being, or one of them,

Justices of the said court may empower persons to take recognizances.

Manner of making out commissions for taking such recognizances, &c.

and which said recognizance or recognizances, bail-piece or bail-pieces, so taken as aforesaid, together with an affidavit made of the due taking of the recognizances of such bail or bail-piece, by some credible person present at the taking thereof (and which affidavit the person so empowered to take the said bail shall be, and hereby is authorised to take and swear) shall, within ten days after the taking such bail, be transmitted to the office of the prothonotary of the said county, there to be filed of record upon payment of the sum of five shillings and fourpence; and which recognizance of bail or bail-piece, so taken and transmitted, shall be of like effect as if the same were taken before the justices of the said court, in open court; and the following fees, and no more, shall be paid for each of the said last-mentioned commissions, and for taking the acknowledgments of the bail and affidavits respecting the same; (to wit,) the sum of two shillings for the fiat or warrant; the sum of seven shillings and sixpence for making out the commission, besides the King's duty and parchment; the sum of four shillings for the seal; the sum of five shillings for taking every such acknowledgment or bail-piece; and the sum of one shilling for the swearing the affidavit of the due taking thereof.

Fees to be paid for commissions to take recognizances.

III. And be it further enacted by the authority aforesaid, That the said justices for the time being shall and may make such rules and orders for the justifying of such bails, and making the same absolute, as to them shall seem meet, so that it may not be necessary for the cognizor or cognizors of any such bail or bails to appear in the said court to justify him or themselves, but that the same may be determined by affidavit or affidavits duly taken before any of the said commissioners to be appointed as aforesaid (or before the prothonotary of the said court for the time being, or his officiating deputy, *ex officio*, as officers of the said court, and without any commission for that purpose) touching the value of the respective estates, and other necessary qualifications of such cognizor or cognizors; and for the swearing of each such affidavit shall be taken the sum of one shilling, and no more: Provided also nevertheless, That nothing in this Act contained shall prevent the prothonotary of the said court for the time being, or his officiating deputy, from taking and receiving *ex officio*, and as officers of the said court, recognizances of bails in actions or suits commenced, or hereafter to be commenced in the said court, in such manner as he and they have done, or by law might do, as if this Act had not been made.

Justices of the said court may make rules for justifying bail by affidavits before the commissioners.

Power of prothonotary, or his deputy, to take recognizances not to be affected by this Act.

IV. And it is further enacted by the authority aforesaid, That any person or persons who shall, before any person or persons empowered by virtue of this Act, as aforesaid, to take special bail or bails, represent or personate any other person or persons, whereby the person or persons so represented or personated may be liable to the payment of any sum or sums of money for debt or damages, to be recovered in the same suit or action wherein such person or persons is or are represented or personated, as if he, she, or they, had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be a felon or felons, and shall suffer and incur the same pains, penalties, and forfeitures, as persons convicted of the like offences are liable to by virtue of an Act passed in the fourth year of the reign of King *William* and Queen *Mary*, intituled, "An Act for taking Special Bails in the country, upon actions and suits depending in the Courts of King's Bench, Common Pleas, and Exchequer, at *Westminster*."

If any person represent another in entering into special bail, he shall be adjudged a felon.

[No. XLIX.] 33 George III. c. 68.—An Act for remedying Inconveniences attending certain Proceedings in the Courts of Great Sessions in *Wales*, and for the County Palatine of *Chester*, in the Court of Common Pleas for the County Palatine of *Lancaster*, in the

No. XLIX. 33 Geo. III. c. 68.

Court of Pleas for the County Palatine of *Durham*, and in the County Courts in *Wales*.—[17th *June*, 1793.]

'WHEREAS persons against whom judgments may be obtained in 'the courts of great sessions in *Wales*, the court of great sessions 'for the county palatine of *Chester*, the court of common pleas for the 'county palatine of *Lancaster*, and the court of pleas for the county 'palatine of *Durham*, may in order to avoid execution, remove their 'persons and effects beyond the jurisdiction of such courts:' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases where final judgment shall be obtained in any action or suit, in any of the said courts, it shall and may be lawful to and for any of his Majesty's Courts of Record at *Westminster*, upon affidavit made before a judge, or commissioner authorized to take affidavits in such court, and filed therein, of such judgment being obtained, and diligent search and enquiry having been made after the person or persons against whom such final judgment shall be obtained, on his, her, or their effects, and of execution having issued against the person or persons, or effects, as the case may be, of such person or persons, against whom such final judgment shall be obtained, and that the person or persons, or effects of such person or persons, are not to be found within the jurisdiction of such court, to cause a transcript of the record of the said judgment to be removed into such court at *Westminster*; and to issue writs of execution thereupon to the sheriff of any county, city, liberty, or place, against the person or persons, or effects of such person or persons, against whom such final judgment shall be obtained, in such manner as upon judgments obtained in the said courts at *Westminster*; and the sheriff upon every such execution shall, and he is thereby authorized to detain the person or persons against whom such execution shall be issued, until the sum of forty shillings be paid to him, or to levy that sum out of the effects, according to the nature of the execution, for the extraordinary costs of the person or persons by whom such final judgment shall be obtained in such court subsequent to the said judgment, and of the execution in the said court at *Westminster*, over and above the money for which such execution shall be issued.

Where final judgments shall be obtained in the courts of great sessions in Wales, &c. and the persons or effects cannot be found within the jurisdiction of the court, any court of record at Westminster may issue execution, &c.

'II. And whereas by an Act, passed in the thirty-fourth year of the 'reign of his Majesty King *Henry* the Eighth, intituled, "An Act for 'certain ordinances in the King's dominions and principality of *Wales*," 'it is amongst other things enacted, That the sheriff of the several 'counties or shires in *Wales*, in the said Act mentioned, upon every 'judgment had before him in his county or hundred court, in any plaint 'under forty shillings, may award a *capias ad satisfaciendum* to arrest the 'party condemned; and it is also enacted, That no execution of any 'judgment given or to be given in any court in the said Act mentioned 'be stayed or deferred by reason of any writ of false judgment, but that 'execution may be had and made at all times before the reversal of the 'said judgment, the pursuit of the said writ notwithstanding:' Be it further enacted by the authority aforesaid, That the several clauses aforesaid in the said Act shall be, from and after the passing of this Act, repealed.

Clauses in 34 Henry 8. cap. 26. enacting, That the sheriffs in Wales, in plaints under 40*s.* may award a capias, &c. and that no judgment be stayed by any writ of false judgment, repealed.

III. Provided always, and be it further enacted, That no execution shall be stayed upon or by any writ of false judgment for the reversing of any judgment given in any county court in *Wales*, unless the person or persons who shall prosecute the said writ be first bound unto the party or parties for whom the said judgment shall have been given, in a recognizance with two sufficient sureties, such as the sheriff in the said court shall approve and allow, in the sum of ten pounds (except where the sum adjudged for costs and damages shall exceed the sum of ten pounds, and in such case in double the sum so adjudged,) to prosecute the said writ with effect, and also to pay and satisfy, if the said judg-

No execution to be stayed by any such writ, unless the prosecutor enter into a recognizance, &c.

ment be affirmed, or the said writ abated or nonprossed, all and singular the damages and costs adjudged, and also the costs and damages awarded for the delay of execution; the acknowledgment of which recognizance the said sheriff is hereby authorized and required to take and file amongst the proceedings of his said court; and for the caption and filing whereof the sum of one shilling, and no more, shall be paid to the said sheriff by the person or persons who shall prosecute the said writ: And in case of a breach of the condition of such recognizance, the conuzee or conuzees thereof may have and maintain an action of debt on the same, in any of his Majesty's Courts of Record in *Wales*, against the conuzors, or either of them, to recover all and singular the damages and costs in the said recognizance mentioned.

In case of breach of recognizance an action of debt may be maintained.

[No. XLIX. a.] 34 George III. c. 46.—An Act for taking of Special Bail in Actions and Suits depending in the Court of Common Pleas of the County Palatine of *Lancaster*.—[9th *May*, 1794.]

34 George III. c. 46.

WHEREAS it hath been found inconvenient that no person is empowered to grant commissions for the taking and receiving recognizances of bail in actions and suits commenced or depending in the Court of Common Pleas, otherwise called *The Court of Session for the county palatine of* Lancaster, held before his Majesty's justices there: For remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, the chancellor of the duchy and county palatine of *Lancaster*, or his vice-chancellor for the said county palatine for the time being respectively, shall and may, by one or more commission or commissions, under the seal of the said county palatine, from time to time, as occasion may require, impower such and so many person and persons, (other than common attornies or soliciters), as he, or either of them, shall think fit and necessary, in the said county palatine of *Lancaster*, to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing and desirous to acknowledge or make, before any person so empowered in any action or suit depending, or hereafter to be depending, in the said court, in such manner and form, and by such recognizance or bail piece, as special bails are usually or by law ought to be taken; which said commissions shall be made out by the prothonotary of the said court, upon a fiat or warrant from the said chancellor, or vice-chancellor for the time being, and which said recognizance or recognizances, bail piece or bail pieces, so taken as aforesaid, together with an affidavit made of the due taking of the recognizances of such bail or bail piece, by some credible person present at the taking thereof, or being one of the people called Quakers, by his affirmation, and which affidavit or affirmation the person so empowered to take the said recognizance or recognizances of bail or bails shall be, and hereby is authorized to receive and take and to administer the oath or solemn affirmation, as the case may require, shall within ten days after the taking such bail, be transmitted to the office of the prothonotary of the said county, there to be filed of record, upon payment of the sum of eleven shillings and eight-pence; and which recognizance of bail or bail piece, so taken and transmitted, shall be of full force and effect; and the following fees, and no more, shall be paid for each of the said last mentioned commissions, and for taking the acknowledgments of the bail and affidavits, or affirmations respecting the same; (to wit),

Preamble.

The chancellor orvice-chancellor of the county of *Lancaster*, may authorize persons to take bail in actions depending in the County Court, &c.

The sum of three shillings for the fiat or warrant:

The sum of eight shillings and sixpence for making out the commission, besides the King's duty and parchment:

The sum of five shillings for the seal:

Fees.

No. XLIX. a. 34 Geo. III. c. 46.

The sum of six shillings for taking every such acknowledgment or bail piece:

And the sum of one shilling for the taking of the affidavit or affirmation of the due taking thereof.

Justices of the court may make rules for justifying bail, &c.

II. And be it further enacted, by the authority aforesaid, That his Majesty's justices of the said court, for the time being, shall and may make such rules and orders for the justifying of such bails, and making the same absolute, as to them shall seem meet, so that it may not be necessary for the cognizor or cognizors of any such bail or bails to appear in the said court to justify him or themselves, but that the same may be determined by affidavit or affidavits, (or being made by any of the people called Quakers, by affirmation or affirmations), duly taken before any commissioner to be appointed as aforesaid, (or before the prothonotary of the said court for the time being, or his officiating deputy *ex officio*, as officers of the said court, and without any commission for that purpose), touching the value of the respective estates, and other necessary qualifications of such cognizor or cognizors; and for the swearing of each such affidavit, or taking such affirmation, shall be received the sum of one shilling and no more.

Prothonotary or his deputy may take bail as heretofore.

III. Provided also nevertheless, That nothing in this Act contained shall prevent the prothonotary of the said court for the time being, or his officiating deputy, from taking and receiving *ex officio*, and as officers of the said court, recognizances of bails in actions or suits commenced or hereafter to be commenced in the said court, in such manner as he and they have done, or by law might do, if this Act had not been made.

Persons swearing falsely to be liable to the same penalties as would have been incurred in Courts of Record at *Westminster*.

IV. And be it further enacted, that if any person or persons who shall make any affidavit or affirmation of the due taking of the recognizance of any bail, or for the justification of any bail, or otherwise in relation thereto, in any suit or action depending, or to be hereafter depending, in the said court, shall falsely swear, or falsely affirm in or by his or their said affidavit or affirmation respectively, every such person and persons shall incur and be liable unto the like pains and penalties as he, she, or they, would have incurred and been liable unto, if such affidavit or affirmation had been made and taken in open court, in any of his Majesty's Courts of Record at *Westminster*.

Persons representing others who may thereby be liable to the payment of money, to be deemed felons.

V. And be it further enacted, That any person or persons who shall, before any person or persons empowered by virtue of this Act as aforesaid to take special bail or bails, represent or personate any other person or persons, whereby the person or persons so represented or personated may be liable to the payment of any sum or sums of money for debt or damages to be recovered in the same suit or action wherein such person or persons is or are represented or personated, as if he, she, or they had really acknowledged and entered into the same, being lawfully convicted thereof, shall be adjudged, esteemed, and taken to be a felon or felons, and suffer and incur the same pains, penalties, and forfeitures, as persons convicted of the like offences are liable to by virtue of an Act passed in the fourth year of the reign of King *William* and Queen *Mary*, intituled, *An Act for taking special bails in the Country upon actions and suits depending in the Courts of King's Bench, Common Pleas, and Exchequer, at* Westminster.

[No. L.] 34 George III. c. 58.—An Act to prevent the Removal of Suits from the Inferior Courts in the County Palatine of *Lancaster*, into the Court of Common Pleas of the said County Palatine.—[23d *May* 1794.]

34 George III. c. 58.

'WHEREAS great mischiefs have arisen from the facility of removing causes of small value from the inferior courts in the county palatine of *Lancaster*, into the court of Common Pleas of the said county palatine;' For remedy whereof, be it enacted by the King's

No. L. 34 Geo. III. c. 58.

most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, no execution shall be stayed or delayed upon or by any writ of false judgment, or *supersedeas* thereon, to be sued for the reversing of any judgment given or to be given in any inferior court within the county palatine of *Lancaster*, where the debt or damages are under ten pounds, unless such person or persons in whose name or names such writ of false judgment shall be brought, with two sufficient sureties, such as the court (wherein such judgment is or shall be given) shall allow of, shall, first, before such stay made, or *supersedeas* to be awarded, be bound unto the party for whom such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment, to prosecute the said writ of false judgment with effect, and also to satisfy and pay (if the said judgment be affirmed, or the said writ of false judgment be not proceeded in) all and singular the debt, damages, and costs adjudged, and all costs and damages to be awarded for the same delaying of execution.

No execution shall be stayed by writ of false judgment, &c. in any inferior court in the county of Lancaster, but on certain conditions,

II. And be it further enacted, That no cause, where the cause of action shall not amount to the sum of ten pounds or upwards, shall be removed or removeable from any court of inferior jurisdiction into the Court of Common Pleas at *Lancaster*, by any writ of *pone accedas ad curiam certiorari*, or otherwise, unless the defendant, who shall be desirous of removing such cause, shall enter into the like recognizance as aforesaid, for payment of the debt, or damages and costs, in case judgment shall pass against him; any law or statute to the contrary thereof notwithstanding.

nor any action forlessthan 10*l.* be removed from any inferior court into the Common Pleas of the said county.

[No. LI.] 39 & 40 George III. c. 105.—An Act for the better regulating the Practice, and for preventing Delays in the Proceedings of the Court of Common Pleas at *Lancaster*.—[28th *July* 1800.]

39 & 40 George III. c. 105.

'WHEREAS many delays and difficulties exist in the practice of the Court of Common Pleas at *Lancaster*, in and for the county palatine of *Lancaster*, by reason that the commencement and continuance of suits and proceedings in the said court have relation to the times of the teste of the original writs whereupon such suits and proceedings are grounded, and to the assizes at which such writs are returnable, and at or of which such suits and proceedings are inrolled or recorded, and also by reason of the want of more frequent days of return of writs of inquiry of damages and *scire facias*, and of judicial process, issuing out of the same court;' For remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, it shall and may be lawful to and for any plaintiff or plaintiffs, defendant or defendants respectively, in any personal suit or action, or in any action of trespass and ejectment hereafter to be depending in the said court, to declare upon, plead, and give evidence of any cause or causes of action, or any matter or thing, matters or things, in bar or preclusion of any such suit or action, or any other matters or things whatsoever, provided the same shall have accrued or happened, or shall hereafter accrue or happen, prior to the day of the actual signing and issuing of the writ of *capias ad respondendum*, or other process, first actually issued forth in such personal suit or action, or prior to the day of the actual serving of any declaration or declarations in any such action of trespass and ejectment, notwithstanding such cause or causes of action, matters or things, shall or may not have accrued prior to the teste and return of the original writ or

Plaintiffs or defendants may plead and give evidence of any cause of action, or any thing in bar of any suit, provided the same shall happen prior to the issuing of the writ of *capias ad respondendum*, &c. or prior to the day of actual service of any declaration in ejectment; notwithstanding

No. L. 39&40G.III. c. 105.

writs whereupon or whereby such suit or action is or shall be, either really or by fiction of law, grounded or warranted, or prior to the assizes or time wherein or whereof such declaration or declarations is or are, or shall or may be filed and recorded; and that no advantage shall be taken by reason of any such cause or causes of action, matters, or things as aforesaid, having accrued or being stated to have accrued subsequent to the teste and return of such original writ or writs, or subsequent to the assizes or other the time last abovementioned, or any of them, by or upon demand of oyer of any original writ, plea in abatement, demurrer to any pleading or pleadings, demurrer to evidence, bill of exceptions, writ of error, or any other process or proceedings whatsoever.

the cause of action shall not have accrued prior to the teste and return of the original writ, &c.

No advantage shall be taken by reason of any action having accrued subsequent to such teste and return, &c.

Process issuing out of court may be returnable according to the present practice, or on any of the return days in Easter and Michaelmas terms, according to the court of Common Pleas at Westminster, &c.

II. And be it further enacted, That from and after the passing of this Act, any writ or writs of inquiry of damages, *scire facias*, and any judicial or other process whatsoever hereafter to be issued forth and out of the same court in any action or suit hereafter to be depending in the said court, (except such process as may, according to the present course and practice of the said court, be made returnable on the first *Wednesday* of any month,) shall and may be awarded, made and issued forth returnable either upon or at the several days and times whereupon the same may now be made returnable respectively, according to the present course and practice of the said court, or returnable on any of the return days in *Easter* and *Michaelmas* terms respectively, according to the course of His Majesty's Court of Common Pleas at *Westminster*; and that such writs may be proceeded upon, and judgment entered, and execution issued thereon, tested on the returns of such writs of inquiry, or *scire facias*, or judicial process, in such and the like manner as if the same had been made returnable at the preceding session of assizes of the said county palatine.

No final judgment shall be entered or execution issued within ten clear days after the day of the return of the writ of inquiry or *scire facias*, &c.

III. Provided always, That no final judgment be entered, or execution issued, within the space of ten days next after the day of the return of any such writ of inquiry of damages or *scire facias*, made returnable under the authority of this Act, exclusive of the day of such return and the day of entering such final judgment, or issuing forth of such execution.

Parties not debarred from moving in arrest of judgment.

IV. And provided always, That nothing herein contained shall be construed to debar any party or parties from moving in arrest of judgment, or bringing a writ of error, in the same manner as he or they might have done before the making of this Act.

Proceedings commenced shall not be affected.

V. Provided always, and be it enacted, That nothing in this Act contained shall alter, vary, or affect any proceedings in any action already commenced, and now depending in the said Court of Common Pleas at *Lancaster*;

Public act.

VI. And be it further enacted, That this Act shall be adjudged, deemed, and taken to be a public Act, and shall be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without specially pleading the same.

[No. LII.] 5 George IV. c. 106.—An Act to enlarge and extend the Power of the Judges of the several Courts of Great Sessions in *Wales*, and to amend the Laws relating to the same.—[24th *June* 1824.]

No LII.
5 Geo. IV.
c. 106.

WHEREAS difficulties have arisen in his Majesty's Courts of Great Sessions in *Wales* from a want of power in the Judges of such courts respectively to compel any person residing out of the jurisdiction of any such courts respectively, to attend as a witness on any trial or cause therein; and whereas inconvenience has been experienced for want of power in the Judges of the said Courts of Great Sessions to issue commissions for the taking of answers examinations and affidavits, and for the examination of witnesses, at places out of the respective jurisdictions of the said courts, and of administering oaths to the persons putting in such answers and examinations, and making such affidavits, and being examined as witnesses; and whereas difficulties have arisen in his Majesty's Courts of Great Sessions in *Wales* with respect to enforcing rules orders and decrees of the said courts, against persons who have entered appearances in suits instituted in such courts, or have come in as creditors or purchasers, and submitted to the jurisdiction thereof, but by reason of their residence being out of the limits of the jurisdiction of the said courts, or of their having withdrawn themselves therefrom, are not amenable to the process thereof; and whereas it is advisable that further provisions be made for discouraging the practice of commencing frivolous and vexatious suits in his Majesty's courts at *Westminster*, in causes of action arising within the dominion and principality of *Wales*; and also to expedite suits in the said several Courts of Great Sessions, and provide for new trials, and regulate the practice therein. And whereas it is therefore expedient that the powers of the Judges of the said courts should be enlarged and extended, and the laws and usages relating to the same be amended. And whereas it is also expedient to regulate the fees and King's silver payable on fines and recoveries levied and suffered within the principality of *Wales*, and to provide for the more effectually levying and suffering the same. May it please your Majesty that it be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, when and as often as the attendance of any person or persons shall or may be deemed necessary as a witness or witnesses to give evidence in about or concerning any suit, cause, trial, commission, or issue, prosecuted, brought, and depending in or before any of the said Courts of Great Sessions; and such person or persons shall not, when his her or their attendance is so deemed necessary, be resident within the jurisdiction of the said Court of Great Sessions, where such his, her, or their attendance may so be deemed necessary, but be resident at such time in *England* or *Wales*, in all and every such cases it shall and may be lawful for any of the parties in the said suits, trial, commission, or issue, to apply to the proper officer of His Majesty's Courts of Exchequer at *Westminster*, and such officer is hereby authorized and required to issue a writ or writs of *subpœna ad testificandum*, or any writ or writs of *subpœna duces tecum*, on demand, in like manner as the same is or are issuable by the said Court of Exchequer in any cause, trial, suit, commission, or issue depending therein; and such writ or writs of *subpœna ad testificandum* and of *subpœna duces tecum* shall be directed to such person or persons, commanding such person or persons to attend and give evidence as a witness or witnesses in such Court of Great Sessions, upon such cause, trial, commission, suit, or issue so prosecuted and depending therein; and such person or persons shall be compelled and compellable to attend the same, in like manner and under such penalties as if the said writ or writs had issued to command his, her, or their attendance in the said Court of Exchequer, in upon or concerning any suit, cause, trial, commission, or issue depending therein; and any such party, on whose behalf any such

Witnesses residing out of the Jurisdiction of the Courts of Great Sessions may be subpœnaed by Exchequer Writs to attend such Courts.

No. LII. 6 Geo. IV. c. 106.

writ or writs shall be issued, in default of obedience to any such writ or writs by the person or persons to whom the same may be directed, and on whom the same shall be served, shall have the like remedy against such person or persons for such default, as if the said writ or writs had issued from the said Court of Exchequer, to compel and require such person or persons to attend and give evidence there: Provided always, that in every case where a new cause or issue is commenced, it shall and may be lawful for the marshal of the said Court of Great Sessions in which such new cause or issue is commenced, in the name of a justice of such court, to issue such writs of *subpœna ad testificandum* or of *subpœna duces tecum*, as either of the parties to the said suit shall require; and in case of disobedience to any such writ, the parties shall have the like remedy in the said Court of Exchequer as if the said writ or writs had been directly issued out of that court.

Certain Writs may be issued by the Marshal of the Court of Great Sessions.

New Trials to be moved for before the Courts of King's Bench Common Pleas or Exchequer.

II. And whereas it may be expedient, for the better and more perfect administration of justice in *Wales*, that the Court of King's Bench Common Pleas and Exchequer should in certain cases have the power of granting new trials of causes which have been commenced and been tried in the said Court of Great Sessions; be it therefore enacted by the authority aforesaid, That from and after the passing of this Act, it shall and may be lawful for any party or parties, who shall be dissatisfied with any verdict given or obtained, or nonsuit entered against him her or them, in any action which shall have been tried in any of the said Courts of Great Sessions, to apply by motion to any of the said Courts of King's Bench, Common Pleas, or Exchequer, sitting *in Banco*, for a rule to show cause why a new trial of such action should not be granted, or nonsuit set aside, and a new trial granted, or a verdict entered for the plaintiff or defendant, or a nonsuit entered, as the case may be, in the same manner as hath been usually heretofore done in actions depending in the said courts, and tried at *Nisi Prius* before any judge of assize, by virtue of any record issuing out of the said courts; and that thereupon it shall and may be lawful for the said courts to grant such rule, and proceed to hear and determine the merits of the same, in such manner and form as hath been heretofore done in actions depending in the said last-mentioned courts, and tried as aforesaid; and in case the courts shall make the said rule absolute, which they are hereby authorized and empowered to do, and order a new trial to be had between the parties in such action, that upon the party or parties who shall have obtained such rule delivering an office copy of such rule, so made absolute, to the proper officer of the court of great sessions where such cause was tried, all proceedings upon the former verdict or nonsuit, so obtained in the said Courts of Great Sessions, shall cease, and the said actions shall proceed to trial at the next or some other Great Sessions, to be holden in and for the county in which the same was tried as aforesaid, in like manner as if no trial had been had therein; or in case of a verdict being ordered to be entered for the plaintiff or defendant, or a nonsuit being ordered to be entered, as the case may be, judgment shall be entered accordingly.

Transcript of Record for which a new Trial shall be moved to be transmitted to the Court to which such application shall be made.

III. And be it further enacted by the authority aforesaid, That a transcript of the record for which such new trial shall be moved, or motion made for altering the verdict, or entering or setting aside a nonsuit, certified by the prothonotary of the said Courts of Great Sessions respectively, or his deputy, shall be transmitted to the court to which such application shall be made as aforesaid, for the purpose of such motion for a new trial, or setting aside such nonsuit, and granting a new trial thereon, or entering a verdict for the plaintiff or defendant, or entering a nonsuit, and which transcript the said prothonotary or his deputy is hereby authorized and required to deliver on demand, on payment of the usual fee; and that the costs of such application for a new trial, and setting aside such nonsuit, or entering a verdict for plaintiff or defendant, or entering a nonsuit, shall be in the discretion of the said court to award and order to and by which party to such motion the same shall be paid: Provided always, that nothing herein contained shall be

Not to prevent Courts of Great Sessions from granting new trials, &c.

deemed or taken to prevent any of the said Courts of Great Sessions from granting any new trial, or setting aside any nonsuit, or entering a nonsuit, or altering a verdict, according to any rule established therein.

Oaths to be administered by the Court, &c.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said court, to which such applications shall be made, or any Commissioner appointed to take affidavits therein, to administer an oath to any person or persons making an affidavit either to obtain such rule, or show cause against the same as aforesaid; and every person or persons for swearing him her or themselves in such affidavit or affidavits, shall incur and be liable to the same penalties as if such affidavit or affidavits had been made and sworn in an action depending in the said court: Provided always, that nothing in this Act contained shall extend or be construed to extend to stay or delay the entering up judgment which shall have been given or obtained in any action in any of the said Courts of Great Sessions, and suing out execution thereon, unless the party or parties intending to apply under the provisions of this Act for a new trial thereof, or for alteration of the verdict, or entering or setting aside a nonsuit, with two sufficient sureties, such as the Court of Great Sessions wherein such action shall be depending shall allow of, shall first before such stay made be bound unto the party or parties for whom such verdict or nonsuit shall have been given or obtained, by recognizance to be acknowledged in the same court, in such reasonable sum as the same Court of Great Sessions shall think fit, to make and prosecute such application for such new trial or alteration of verdict, or entering or setting aside a nonsuit; and also to satisfy and pay, if such application shall be refused, all and singular the debts damages and costs adjudged and to be adjudged in consequence of the said verdict, or nonsuit, in the said Court of Great Sessions, and all costs and damages to be also awarded for the delaying of execution thereon; and upon such recognizance being entered into, the said Court of Great Sessions is hereby authorized to stay all proceedings in such action; and further, that the entering up of judgment, in any of the said Courts of Great Sessions, in any writ of dower or action of ejectment, and suing out execution thereon, shall not be stayed, unless the party or parties intending to apply for a new trial, or to alter the verdict, or set aside a nonsuit therein under the provisions of this Act, shall be bound in manner aforesaid unto the party or parties in whose favour such verdict or judgment of nonsuit shall have been given or obtained, in such reasonable sums as the Court of Great Sessions in which such action shall be depending shall think fit, with condition, that if such application shall not be made and prosecuted, or shall be refused, the party or parties so intending to make such application shall pay such costs damages and sum or sums of money as shall be awarded by the said Court of Great Sessions, in case no such application shall have been made and prosecuted, or after such application shall have been refused; and upon such recognizance being entered into, the said Court of Great Sessions is hereby authorized to stay all proceedings in such action.

Execution not to be stayed unless Bail be given to answerDamages, &c.

On failure of Application, a Writ shall issue to inquire into mesne profits and damages.

V. And to the end that the same sum and sums and damages may be ascertained, it is further enacted, That the Court of Great Sessions wherein such action shall be depending, upon such failure to make and prosecute such application, or such refusal as aforesaid, shall issue a writ (if necessary) to inquire as well of the mesne profits as of the damages by any waste committed after such verdict or nonsuit in such writ of dower or action of ejectment shall have been given or obtained; and upon the return thereof, judgment shall be given, and execution awarded for such mesne profits and damages, and also for costs of suit.

Appointing time of returning Writs of Execution upon Judgments obtained in the Courts of Great Sessions.

VI. And whereas all writs of execution issued upon judgments obtained in the said Courts of Great Sessions in *Wales*, are now returnable only at the Great Sessions held for the respective counties; and Sheriffs frequently delay executing the same for many months, and often refuse to make returns to such writs, or to pay over the money received by

No. LII. 5 Geo. IV. c. 106.

them; and Sheriffs may also refuse to return bailable processes, returnable in the vacation, until the following Great Sessions, to the great prejudice of the suitors of the said court; for remedy whereof, and facilitating the proceedings of the said courts, be it enacted by the authority aforesaid, That from and after the passing of this Act all writs of execution upon judgments obtained in the said Courts of Great Sessions shall and may be made returnable before the Judges of such courts respectively, on the common day in each of the two vacations annually betwixt the two sessions (being the first days of *Trinity* Term after the Spring Sessions, and the first day of *Hilary* Term after the Autumn Sessions), or on the first day of the next sessions, at the election of the party or parties obtaining such judgment, his her or their attorney, who shall sue out the same; and that the Sheriffs (to whom any such writ of execution, or bailable writ issued out of the said courts, returnable in the vacation, shall be delivered) shall make due returns of such writs at the time the same shall be returnable, and file such writs and returns with the proper officer of such courts, or as soon afterwards as such Sheriff shall be called upon by a rule of the same courts.

Prothonotaries to grant Rules for the Sheriffs in Vacation to return Writs.

VII. And be it further enacted by the authority aforesaid, That from and after the passing of this Act it shall and may be lawful to and for the respective prothonotaries of the said courts or such other officers as the Judges of the said courts respectively shall appoint, to grant rules for the Sheriffs in the vacation to return such writs of execution and bailable processes as shall be returnable in the vacation, in such manner and under such regulations as the said justices of the said court shall appoint for that purpose; and in case any Sheriff shall refuse or decline to return any writ within six days after the service of such rule on him or his deputy, such Sheriff shall be in the like contempt, and answerable in the same manner as if such rule had been made by the said Judges at sessions.

Rules made in Vacation as to Plaintiff's Demand and defendant's Set-off, &c.

VIII. And be it further enacted, That after the passing of this Act it shall and may be lawful to and for the said prothonotaries, or such other officer as aforesaid, to grant rules in the vacation for a particular of the plaintiff's demand, and of defendant's set-off, and for leave to plead several matters, or to pay money in stay of proceedings, or to sign judgment for want of a plea, in any action depending in the said court, under such regulations as the said Judges shall appoint for that purpose.

Power to issue Commissions directed to Persons out of the Jurisdiction for taking Examinations, &c.

IX. And be it further enacted by the authority aforesaid, That from and after the passing of this Act it shall and may be lawful for the Judges of the said Courts of Great Sessions respectively, and the Judges of such courts are hereby authorized and empowered to issue commissions to persons resident out of the jurisdiction of such courts, for the purpose of taking answers examinations and affidavits, and for the examinations of witnesses in causes in equity, and also for the taking of affidavits and the examination of witnesses at law, in such manner and in such cases as the said Court of Exchequer has been used to issue the same, as occasion shall require, and of administering oaths to the persons putting in such answers and examinations, and making such affidavits, and being examined as witnesses.

Persons forswearing before a Commissioner liable to Penalties.

X. And it is hereby further enacted by the authority aforesaid, That all and every person or persons forswearing him her or themselves in any answer or affidavit, or in any deposition or examination, taken and sworn before any Commissioner appointed by virtue of this Act, shall incur and be liable to the same penalties as if such answer or affidavit, deposition or examination, had been taken and sworn in any suit in equity depending in the said Court of Exchequer, or in any action depending in the said court.

Power to Judges to make Orders in Actions at Law in any County within the Jurisdiction.

XI. And it is hereby further enacted, That from and after the passing of this Act it shall and may be lawful for the Judges of the said Courts of Great Sessions, and they are hereby authorized and empowered in all cases at law, when the said courts shall be sitting in any county within the limits of such courts respectively, to make such rules and orders in suits at law instituted and depending in the other counties within their juris-

diction, as to them the said Judges shall seem meet, and occasion shall require; and such rules and orders shall be as valid and effectual in the law and as binding upon the parties as if the same had been made in the particular county in which such suits were instituted.

Power to Judges to make Orders out of the Jurisdiction of the Courts in the Vacation.

XII. And it is hereby further enacted, That from and after the passing of this Act it shall and may be lawful for the Judges of the said Courts of Great Sessions, and they are hereby authorized and empowered, in all cases, both at law and in equity, when the said courts shall not be sitting in *Wales*, to hear motions and petitions, and make such rules and orders thereon in vacation, and out of the jurisdiction of the said courts, as to them the said Judges shall seem meet, and occasion shall require; and such rules and orders shall be as valid in the law and as binding upon the parties as the same would or might have been in case the same had been made in *Wales*, within the jurisdiction of the said courts, and during the sitting thereof.

Writs may issue from one County to another.

XIII. And whereas doubts and difficulties arise as to serving process in actions within the respective Courts of Great Sessions, where the cause of action arises in one county, and the defendant or defendants reside in another county, each such counties being within the same jurisdiction of such Court of Great Sessions respectively; be it declared and enacted by the authority aforesaid, That from and after the passing of this Act, whenever a cause of action shall arise in one county and the defendant or defendants shall reside in another county, such counties as last aforesaid being within the same jurisdiction of the said Courts of Great Sessions respectively, it shall and may be lawful that any writ or writs to commence any action within any of the Courts of Great Sessions, shall and may issue, directed to the Sheriff of such county wherein such defendant or defendants may reside, such last-mentioned county being within the same jurisdiction of the said Courts of Great Sessions respectively, notice being endorsed on such writ of the county wherein such action is brought, and which said writ or writs shall be deemed legal process to compel such defendant or defendants to appear to such action or actions.

Prothonotaries may issue testatum Executions against Defendants in any County within the Jurisdiction.

XIV. And be it further enacted, That from and after the passing of this Act, in all cases in which judgments shall have been obtained in the Courts of Great Sessions respectively, it shall and may be lawful for the prothonotary of the circuits of the said Courts of Great Sessions within which such judgment has been obtained, and he is hereby required, upon the application of the person or persons so obtaining the same, to issue a *testatum* execution against the defendant or defendants, his her or their goods and chattels, directed to the Sheriff of any of the counties within the same jurisdiction of such Court of Great Sessions, although such county is not the county within which such judgment was obtained, in such and the same manner, and with the same force and effect as *testatum* executions are issued from the courts at *Westminster* into any county on judgments in actions where the venue is laid in another county.

Power to enforce Orders, &c. against Persons removing out of Jurisdiction by Process from the Courts at Westminster.

XV. And be it further enacted by the authority aforesaid, That in all cases in which any person shall have commenced any suit, or have entered any appearance in any suit at law or in equity instituted in any of the said Courts of Great Sessions, or shall have come in as a creditor or purchaser, or otherwise submitted to the jurisdiction of the said Courts of Great Sessions, but by reason of his or her residence out of the jurisdiction of such courts, or having withdrawn therefrom, his or her person or goods cannot be made amenable to the process thereof, it shall and may be lawful for the said Court of Exchequer in all suits and matters in equity, and in all suits and matters at law for the said Court of Exchequer, and also for the said Courts of King's Bench and Common Pleas, upon a certificate from the proper officer of the said Courts of Great Sessions, of such commencement of suit, or of such appearance having been entered or such submission made, and upon a transcript or office copy of such rule order or decree being duly certified to the said Court of Exchequer in matters of equity, or in matters of law to the said Court of Exchequer or the said Courts of King's Bench and Common Pleas, together with an affidavit of a due service of a copy of such rule

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order or decree, and of the non-performance thereof, to issue an attachment or other process for enforcing obedience to the same, in such manner as is usual for the purpose of enforcing obedience to the rules orders and decrees of such court.

Power to dismiss Officers in certain cases.

XVI. And whereas it is expedient that the Judges of the said Courts of Great Sessions should have full power over the officers thereof; be it therefore enacted by the authority aforesaid, That from and after the passing of this Act it shall and may be lawful for the Judges of the said courts, and they are hereby authorized to remove any officer of the said courts, or his deputy, for peculation extortion or other misconduct, and appoint a new officer or deputy in the room of the person so removed; any law usage or custom to the contrary notwithstanding: Provided always, that nothing in this clause contained shall authorize such Judges to dismiss on their own authority any officer of the said courts nominated and appointed by the Crown.

Officers of the Court to find Security.

XVII. And whereas it is expedient that security shall hereafter be given for any sum or sums of money paid into any of the said Courts of Great Sessions for and on account of any party or parties to any suit therein; be it further enacted, That from and after the passing of this Act the Judges of the said several Courts of Great Sessions shall and may, within their respective jurisdictions, have and take, and are hereby required to have and take, from any officer or officers of such courts respectively, and hereafter to be appointed, within three calendar months next after such appointment, and as often after as occasion may require, such security as to such Judges shall seem proper for and concerning the accounting for all and every sum and sums of money which such officer or officers shall receive in any cause or suit at law or in equity pending in any such Court of Great Sessions, and which said sum or sums of money shall be paid into any such court by any person in any suit therein, and received by any such officer or officers as is or are or shall be accustomed or authorized to receive the same; such security to be given by recognizance, or otherwise, as the said Judges shall direct, binding every such officer or officers, together with two or more sufficient sureties, in such penal sum or sums as to the said Judges shall seem proper, for the due accounting for all and every such sum or sums of money so paid.

Power to secure the Suitors' Money by paying same into the Bank in the name of the Accountant General of the Court of Exchequer.

XVIII. And it is hereby further enacted by the authority aforesaid, That it shall and may be lawful for the Judges of the said Courts of Great Sessions, and they are hereby authorized and empowered, in all cases in which they shall think fit, to order and direct any sum or sums of money belonging to the suitors of the said Courts of Great Sessions to be paid into the Bank of *England*, in the name and with the privity of the the Accountant-General of His Majesty's Court of Exchequer at *Westminster*, subject to the order and decree of the Court of Great Sessions at the instance of which it shall be so paid in; and the said Accountant-General is hereby directed to obey the orders and decrees of such Court of Great Sessions in regard thereto, in like manner as he obeys the orders and directions of the said Court of Exchequer, and to act and do all matters and things relating to the delivering, securing, and investing of the money so ordered to be paid, and the payment selling and transferring of the same, and the keeping the accounts with the Bank of *England*, and other matters relating thereto, in the like manner as he acts and does all matters and things relating to the delivery securing and investing of the money and effects of the suitors of the said Court of Exchequer, and the payment selling and transferring of the same, and the keeping the accounts or other matters relating thereto.

So much of 13G. III. c. 51. as to Actions arising in Wales and tried at the Sessions at the nearest English County repealed.

XIX. And whereas by an Act of Parliament made in the thirteenth year of His late Majesty's reign, intituled *An Act to discourage the Practice of commencing frivolous and vexatious Suits in His Majesty's Courts at* Westminster, *in Causes of Action arising within the Dominion of* Wales, *and for further regulating the Proceedings in the Courts of Great Sessions in* Wales, it is enacted, that in case the plaintiff in any action upon the case for

words, action of debt, trespass on the case, assault and battery, or other personal action, where the cause of such action shall arise within the dominion of *Wales*, and which shall be tried at the assizes at the nearest *English* county to that part of the said dominion of *Wales* in which the cause of action shall be laid to arise, shall not recover by verdict debt or damages to the amount of ten pounds, in such case, if the Judge who tried the cause, on evidence appearing before him, shall certify on the back of the record of *Nisi Prius*, that the defendant or defendants was or were resident in the dominion of *Wales* at the time of the service of the writ or other mesne process served on him her or them in such action, on such fact being suggested on the record or judgment roll, judgment of nonsuit shall be entered against the plaintiff; and such defendant or defendants shall be entitled to and have like judgment and remedy thereon, to recover such and the like costs against the plaintiff or plaintiffs in every such action, as if a verdict had been given by the jury for the defendant or defendants, unless the Judge before whom such cause shall be tried shall certify on the back of the record that the freehold or title of land was chiefly in question, or that such cause was proper to be tried in such *English* county: And whereas it is expedient that so much of the said Act as is herein recited should be repealed, and other provisions be made in lieu thereof; be it therefore enacted, That so much of the said Act as has been herein recited be and from henceforth shall stand absolutely repealed, and is hereby repealed.

So much of 13 G. III. c. 51. as relates to transitory Actions within Wales, not amounting to 10*l.* repealed.

XX. And whereas it is also expedient that so much of the said Act of the Thirteenth year of his late Majesty's Reign which relates to prevent transitory actions, where the cause of action does not amount to ten pounds, arising within the said principality, from being brought in any of his Majesty's Courts of Record out of the said principality, be repealed, and other and further provisions substituted in lieu thereof; be it therefore enacted by the authority aforesaid, That so much of the said last-mentioned Act be and is hereby repealed.

Actions brought out of the Principality of Wales, where the Debt or Damage found shall not amount to 50*l.* and where the same shall be proved to have arisen in Wales, Defendants to recover Costs of Suit.

XXI. And be it further enacted, That in all actions upon the case for words, action of debt, trespass on the case, assault and battery, or other personal action, and all transitory actions, which from and after the sixth day of *November* which shall be in the year of our Lord one thousand eight hundred and twenty-four, shall be brought in any of his Majesty's Courts of Record out of the principality of *Wales*, and the debt or damages found by the jury shall not amount to the sum of fifty pounds and it shall appear upon the evidence given on the trial of the said cause, that the cause of action arose in the said principality of *Wales*, and that the defendant or defendants was or were resident in the dominion of *Wales* at the time of the service of any writ or other mesne process, served on him her or them in such actions, and it shall be so testified under the hand of the judge who tried such cause, upon the back of the record of *Nisi Prius* (on such facts being suggested on the record or judgment roll), a judgment of nonsuit shall be entered thereon against the plaintiff or plaintiffs, and the plaintiff or plaintiffs shall pay to the defendant or defendants in such action, his her or their costs of suit, and the defendant and defendants shall have like remedy to recover the same as in the case of a verdict given for the defendant or defendants in such action; and in the taxation of all costs allowed and given to the defendant or defendants, the proper officer shall allow to the plaintiff or plaintiffs, out of the defendant's costs, the full sum given by the verdict to the plaintiff or plaintiffs for his her or their debt or damages; and although no judgment shall be entered for the plaintiff or plaintiffs upon such verdict, yet nevertheless such verdict, without any judgment entered thereon, shall be an effectual bar to any action or actions commenced in any court whatsoever by the plaintiff or plaintiffs for the same.

Certificate to be made by Judge in cases where the cause of Action has commenced in Wales and tried in England.

XXII. Provided always, and be it further enacted, That nothing in this Act contained shall bar or preclude any person or persons from commencing and carrying on any action, and which may be tried at the Assizes at the nearest *English* county to that part of the said dominion of

No. LII. 5 Geo. IV. c. 106.

Wales in which the cause of action shall be laid, to arise against any defendant or defendants so resident in the dominion of *Wales*, and obtaining full costs in such action, if the judge before whom the cause shall be tried shall certify on the back of the record that the title or freehold of land was chiefly in question, or that such cause was proper to be tried in such *English* county.

No Certiorari to be allowed without Notice.

XXIII. And for better preventing vexatious delays and expences occasioned by the suing forth writs of certiorari for the removal of actions, suits, causes, or other proceedings at law, commenced and carried on in any of His Majesty's Courts of Great Session in *Wales*, and for regulating in future the issuing of such writs; be it further enacted, That from and after the sixth day of *November* which shall be in the year of our Lord one thousand eight hundred and twenty-four, no writ of certiorari shall be granted issued forth or allowed to remove any action, bill, plaint, cause, suit, or other proceeding at law whatsoever, originated in or commenced, carried on or had in any of His Majesty's Courts of Great Sessions in *Wales*, unless it be duly proved upon oath that the party or parties suing forth the same hath or have given seven days' notice thereof in writing to the other party or parties concerned in the action, bill, plaint, cause, suit or other proceeding sought to be so removed, and unless the party or parties so applying or suing forth such writ shall, upon oath, show to the court in which application shall be made sufficient cause for issuing such writ, and so that the party or parties therein concerned may have an opportunity to show cause, if he or they shall so think fit, against the issuing or granting such certiorari, and that the costs of such application be in the discretion of the court wherein such application shall be made for such certiorari.

Fees and King's Silver on Fines and Recoveries, to be the same as in the Common Pleas at Westminster.

XXIV. And whereas the sum or sums of money now demandable and payable for fines and recoveries levied and suffered at the several Courts of Great Sessions in *Wales*, is and are unequal and uncertain in the amount; be it further enacted, That from and after the passing of this Act, the Fees to be paid on any fine or recovery so levied or suffered, and the amount of King's silver to be paid thereon, shall be in the same proportion, and ascertained and calculated in the same manner by the proper officer, as the fees and King's silver now usually payable on fines and recoveries levied and suffered in His Majesty's Courts of Common Pleas at *Westminster*, and shall not exceed the same.

The present Fees continued till the Termination of the Patents.

XXV. Provided always, and be it further enacted, That in all and every case where such fees and King's silver are now payable to any person or persons duly authorized to receive and compound for the same, under and by virtue of any patent or patents for any term or terms now in existence, within the respective Courts of Great Sessions in *Wales*, the same sum or sums as is or are now demandable and payable under and by virtue of such patent or patents, shall be hereafter paid during the term or terms granted by such patent or patents; but that when and as often as such term or terms shall respectively cease expire and determine, the said sum or sums of money thereafter payable upon levying or suffering of any such fines and recoveries, as King's silver or fees thereon, within the limits of the jurisdiction of the Court or Courts of Great Sessions in such patent or patents named, and the term or terms whereof shall have so ceased expired and determined, shall immediately after any such expiration and determination, be thenceforth in the same proportion, and be ascertained and calculated in the same manner by the proper officer, as the fees and King's silver now usually payable on fines and recoveries levied and suffered in the said Court of Common Pleas, and shall not exceed the same.

Regulations as to the levying of Fines in Wales.

XXVI. And whereas fines can now be levied in the said Courts of Great Sessions within the dominion of *Wales* twice only in the year, and it is expedient to give to His Majesty's subjects possessing lands tenements and hereditaments within *Wales*, the power of levying such fines four times in the year, in like manner as the subjects of the realm of *England* can now levy the same; be it therefore further enacted, That from and after the passing of this Act it shall and may be lawful for the

cursitor of each and every Court of Great Sessions in *Wales*, to issue any writ or writs of covenants, for the purpose of levying any fine or fines within the jurisdiction of such courts respectively, such writs to be issued and be tested, and bear date fourteen days at least before the first day of *Hilary* Term, or fourteen days at least before the first day of *Trinity* Term in each and every year; and the several cursitors, and each and every of them, are hereby required so to do as often as applied to for that purpose, on payment of the usual fee or fees now demandable on any writ of covenant; and that all and every writ or writs so tested or bearing date as aforesaid be made returnable on the said first day of *Hilary* Term, and the said first day of *Trinity* Term respectively, in each and every such year; and that upon an acknowledgment of such fine or fines by the proper parties to the same, taken before a Judge of such court respectively, or by virtue of any *dedimus potestatem*, which the said cursitor or cursitors is and are hereby also required to grant, as often as the same be necessary; and on the *allocatur* of a Judge of the Court of Great Sessions within whose jurisdiction the fine may be so levied, in like manner in which such *allocatur* is given when a fine is acknowledged on any *dedimus potestatem*, or otherwise during the sitting of such Courts of Great Sessions, and on a certificate made on the back of any such writ or writs of covenant by the proper officer of such court, of the actual payment of King's silver payable upon every such fine or fines; and which certificate such proper officer is hereby required to make upon payment of such King's silver, at the costs and charges of any person or persons paying the same, such fine or fines shall have full force and effect, and be deemed to be fully completed from the said first day of *Hilary* Term, or the said first day of *Trinity* Term, on which the said writ or writs shall be made returnable as aforesaid; and proclamation, if necessary, shall be made of such fine or fines at the next ensuing Great Sessions, and at the two following Great Sessions, according to law; and all such fine and fines shall operate and enure, and shall be equally binding upon all lands tenements and hereditaments, and upon all parties privy thereto, from the said first day of *Hilary* Term, and the said first day of *Trinity* Term, in like manner as if the same was or were levied during the sitting of the Court of Great Sessions, within the jurisdiction of which such lands tenements and hereditaments are situated.

Fines to take effect from Date of Caption.

XXVII. And be it further enacted, That all and every fine and fines hereafter levied in *Wales*, shall take effect and enure, and be deemed complete from the date of the caption of the acknowledgment taken in such fine or fines, and on the payment of King's silver due thereon, notwithstanding the death or deaths of any party or parties to such fine or fines after such acknowledgment.

Persons authorized to take affidavits.

XXVIII. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, any person authorized to take affidavits as a Commissioner in the Courts of King's Bench Common Pleas and Exchequer, or a Master extraordinary in the High Courts of Chancery in the United Kingdom, are hereby authorized to take any affidavit of and concerning any matter or matters arising, or fines or recoveries levied or suffered within the said respective Courts of Great Sessions, in like manner as any affidavit is now taken in the said last-mentioned Courts of King's Bench, Common Pleas, Exchequer, or Chancery, of and concerning any fines or recoveries levied or suffered, or any cause matter or thing depending or in anywise concerning any of the proceedings arising or being within the last-mentioned courts.

Qualification of Jurymen.

XXIX. And for the better regulation of persons hereafter serving as petit jurymen at any of the said Courts of Great Sessions; be it further enacted, That from and after the first day of *July* which shall be in the year one thousand eight hundred and twenty-four, no person shall be compellable to serve on any petit jury at any such Court of Great Sessions, unless he possess an estate of freehold or copyhold of the clear yearly value of eight pounds or upward, or any estate for the term of any life or lives, or for the term of ninety-nine years from the commencement of such estate, of the clear yearly value of fifteen pounds,

No. LIV. 7 Geo. IV. c. 17.

[No. LIII.] 6 George IV. c. 97.—An Act for the better Preservation of the Peace and good Order in the Universities of *England*.—[5th *July* 1825.]

WHEREAS it is expedient to add to the means anciently provided for maintaining peace and good order in the Universities of *Oxford* and *Cambridge*: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the Chancellor or Vice Chancellor of the said Universities respectively, to appoint such number of able men as he shall think fit to be constables in and for the said Universities respectively who shall continue in office either during good behaviour or during pleasure, or for such period of time, either defined or dependent on future circumstances, as such Chancellor or Vice Chancellor shall direct; and to every man so appointed such Chancellor or Vice Chancellor shall administer an oath well and faithfully to execute the office of constable, within the precincts of the University for which he shall be appointed, during his continuance in office, and shall deliver to every such man a certificate of his having been so sworn, expressing the duration of his continuance in office, which certificate shall be evidence of his having been duly appointed; and every man so sworn shall have full power to act as a constable within the precincts of the University for which he shall be appointed, and four miles of the same University, for the time expressed in the certificate, unless he shall be sooner dismissed therefrom by the Chancellor or the Vice Chancellor for the time being; and shall within the precincts of the University, and four miles of the same, and during his continuance in office, be subject to the like powers and authorities of His Majesty's Justices of the Peace within the limits of their respective jurisdictions, as other constables are subject to, and have and enjoy all such powers and authorities, privileges, immunities, and advantages as any constables hath or shall have within his constablewick: Provided always, that every such constable, for any act done by him in the execution of his office, shall be liable to be sued or indicted in the courts of common law, notwithstanding such constable may be a member of the University, and notwithstanding any claim of cognizance or privilege whatsoever.

Chancellor or Vice Chancellor of Universities may appoint Constables.

In absence of Chancellor and Vice-Chancellor, Deputy may act.

II. And be it further enacted, That in the absence of the Chancellor and Vice Chancellor, it shall be lawful for any pro Vice Chancellor or deputy Vice Chancellor, to execute the powers given by this Act.

Punishing Prostitutes.

III. And be it further enacted, That every common prostitute and night walker found wandering in any public walk street or highway within the precincts of the said University of *Oxford*, and not giving a satisfactory account of herself, shall be deemed an idle and disorderly person, within the true intent and meaning of an Act passed in the last Session of Parliament, intituled *An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of* Great Britain *called* England, and shall and may be apprehended and dealt with accordingly.

5 G. IV. c. 83.

Public Act.

IV. And be it further enacted, That this Act shall be deemed to be a public Act; and shall be judicially taken notice of as such by all Judges Justices and other persons whomsoever, without being specially pleaded.

[No. LIV.] 7 George IV. c. 17.—An Act for remedying Inconveniences in the Administration of Justice, arising from the present Vacancy of the See of *Durham*, and for preventing the like in future.—[11th *April* 1826.]

WHEREAS the office of Sheriff in the County Palatine of *Durham* is held by grant of the Bishop of *Durham* for the time being, during

the pleasure of the same Bishop, and the see of *Durham* is now vacant by the decease of the late Bishop thereof; and by reason of his decease the said office of Sheriff hath also become vacant, and there was no officer legally authorized to return jurors or to execute writs at the General Quarter Session of the Peace for the said County Palatine in the week after the clause of *Easter*; and it is necessary to provide a remedy for the inconveniences which may ensue therefrom, and in other respects from the vacancy of the said office of Sheriff: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the last Sheriff of the said County Palatine, his deputy or deputies, and all other officers and ministers of justice within the same, whose offices determined on the decease of the late Bishop of the said see, shall be, and they are hereby continued in their respective offices from the decease of the said late Bishop for the term of six calendar months thence next ensuing, in as full and ample manner to all intents and purposes as if the said see had not become vacant, unless the succeeding Bishop of the said see shall sooner determine the same or any of them; and that the said Sheriff officers and minister respectively, shall have the like power and authority of executing and returning all writs and precepts to him or them directed or to be directed, and of doing all other acts to their respective offices appertaining, as fully and effectually as if the said see had not become vacant; and that all trials and other proceedings had and taken, or to be had and taken, in the Court of Quarter Session holden for the said County Palatine in the week after the clause of *Easter*, or at any adjournment thereof; and all judgments and orders there pronounced and made, and all sentences and punishments there passed and awarded, shall be good valid and effectual to all intents and purposes whatsoever, any law or usage to the contrary notwithstanding: Provided always, that nothing herein contained shall be construed to legalise or render valid any act which would not have been legal or valid if the said see had not become vacant.

The last Sheriff, &c. of Durham to continue in office for Six Months from the decease of the late Bishop unless succeeding Bishop shall sooner determine the same.

Proceedings at the last Easter Quarter Session valid.

II. And, for preventing the like inconveniences in future, be it further enacted, That no grant or appointment of or to any office or employment concerning the administration of justice in the said County Palatine, hereafter to be made by any Bishop of the said see, shall cease determine or be void by reason of the death of any such Bishop, but every such grant and appointment shall continue in full force for the term of six calendar months after any such death, unless in the meantime determined by any succeeding Bishop of the said see.

Determination of Grants of Office hereafter to be made by any Bishop of Durham.

III. And be it further enacted, That this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges Justices and others, without being specially pleaded.

Public Act.

PART IV.

CLASS XVI.

Inferior Courts.

[No. I.] 9 Henry III. (Magna Charta) c. 35.—At what Time shall be kept a County Court, Sheriff's Turn, and a Leet.

'NO county court from henceforth shall be holden, but from month to month; and where greater time hath been used, there shall be greater: Nor any sheriff, or his bailiff, shall keep his turn in the hundred but twice in the year; and no where but in due place, and accustomed; that is to say, once after *Easter*, and again after the feast of saint *Michael*. And the view of frankpledge shall be likewise at the feast of saint *Michael* without occasion; so that every man may have his liberties which he had, or used to have, in the time of King *Henry* our grandfather, or which he hath purchased since: but the view of frankpledge shall be so done, that our peace may be kept; and that the tything be wholly kept as it hath been accustomed; and that the sheriff seek no occasions, and that he be content with so much as the sheriff was wont to have for his view-making in the time of King *Henry* our grandfather.' 9 Henry III. c. 35.

[No. II.] 20 Henry III. (Merton) c. 10.—Attornies allowed to make Suit to several Courts.

'IT is provided and granted, that every freeman, which oweth suit to the county, trything, hundred, and wapentake, or to the court of his lord, may freely make his attorney to do those suits for him.' 20 Henry III. c. 10.

[No. III.] 6 Edward I. (Gloucester) c. 8.—No Suit for Goods in the King's Courts under Forty Shillings. Attornies may be made where an Appeal lieth not. The Defendant being essoigned shall bring in his Warrant.

[Inserted ante. c. I. No. 3.] *

* See Appendix, No. 3.

[No. IV.] 13 Edward I. stat. 1. (Westminster second) c. 36.—A Distress taken upon a Suit commenced by others.

"FORASMUCH as lords of courts, and other that keep courts, and stewards, intending to grieve their inferiors, where they have no lawful mean so to do, procure other to move matters against them, and put in surety and other pledges, or to purchase writs, and at the suit of such plaintiffs compel them to follow the county, hundred, wapentake, and other like courts, until they have made fine with them at their will;" 'it is ordained that it shall not be so used hereafter. And if any be attached upon such false complaints, he shall 13 Edward I. st. 1. c. 36. The penalty for procurement of suits.

No. IV. 3 Edward I. st. 1. c. 36.

'replevy his distress so taken, and shall cause the matter to be brought 'afore the justices, before whom if the sheriff, bailiff, or other lord '(after that the party distrained hath framed his plaint) will advow the 'distress lawful by reason of such complaints made unto them, and it 'be replied that such plaints were moved maliciously against the party 'by the solicitation or procurement of the sheriff, or other bailiffs, or 'lords, the same replication shall be admitted; and if they be convict 'hereupon, they shall make fine to the King, and nevertheless restore 'treble damages to the parties grieved.'

[No. V.] 13 Edward I. stat. 1. (Westminster second) c. 37.—No Distress shall be taken but by Bailiffs known and sworn.

13 Edward I. st. 1. c. 37.

"FORASMUCH also as bailiffs, to whose office it belongeth to take "distresses, intending to grieve their inferiors, that they may exact "money of them, do send strangers to take distresses, to the intent "that they might grieve their inferiors, by reason that the parties so "distrained, not knowing such persons, will not suffer the distresses to "be taken;" 'it is provided, That no distress shall be taken but by 'bailiffs sworn and known. And if they which do distrain do other-'wise, and thereof be convict (if the parties grieved will purchase a writ 'of trespass) they shall restore damages to the parties grieved, and be-'sides, shall be grievously punished towards the King.'

[No. VI.] 18 Edward II.—The Statute for View of Frankpledge.

18 Edward II.

'FIRST, you shall say unto us by the oath that you have made, If all 'the jurors that owe suit to this court be come, and which not.

'2. And if all the chief pledges be come, as they ought to come, and 'which not.

'3. And if all the dozeins be in the assize of our Lord the King, and 'which not, and who received them.

'4. And if there be any of the King's villains fugitive dwelling other-'were than in the King's demeans, and of such as be within the King's 'demeans, and have not abiden a year and a day.

* Not in orig.

'* 5. *And if there be any of the lords villains in frankpledge otherwise 'than in this court.*

'6. Of customs and services due to this court withdrawn, how, and by 'whom, and in what bailiffs' times.

'7. Of purprestures made in lands, and waters to annoyance.

'8. Of walls, houses, dikes, and hedges set up or beaten down to an-'noyance.

'9. Of bounds withdrawn and taken away.

'10. Of ways and paths opened or stopped.

'11. Of waters turned or stopped, or brought from their right 'course.

'12. Of breakers of houses, and of their receivers.

'14. Of petty larons, as of geese, hens, or sheafs.

'15. Of thieves that steal clothes, or of thieves that do pilfer clothes 'through windows and walls.

'16. Of such as go in message for thieves.

'17. Of cries levied and not pursued.

'18. Of bloodshed, and of frays made.

'19. Of escapes of thieves or felons.

'20. Of persons outlawed returned, not having the King's warrant.

'21. Of women ravished not presented before the coroners.

'22. Of clippers and forgers of money.

'23. Of treasure found.

No. VI. 18 Edw. II.

'24. Of the assize of bread and ale broken.
'25. Of false measures, as of bushels, gallons, yards, and ells.
'26. Of false balances and weights.
'27. Of such as have double measure, and buy by the great, and sell 'by the less.
'28. Of such as continually haunt taverns, and no man knoweth 'whereon they do live.
'29. Of such as sleep by day and watch by night, and eat and drink 'well, and have nothing.
'30. Of cloth-sellers and curriers of leather dwelling out of merchant 'towns.
'31. Of such as flie into church or church-yard, and after depart 'without doing that which belongeth thereunto.
'32. Of persons imprisoned, and after let go without mainprize.
'33. Of such as take doves in winter by doorfalls or engines.
'34. And of all these things you shall do us to wit, by the oath you 'have taken.'

[No. VII.] 15 Richard II. c. 12.—No Man shall be compelled to answer for his Freehold before the Council of any Lord.

15 Richard II. c. 12.

"ITEM, at the grievous complaint of the Commons made in full Parliament, for that divers of the King's subjects be caused to come "before the council of divers lords and ladies, to answer for their free- "hold, and so for divers other things, real and personal, that ought to "be ordered by the law of the land, against the estate and the right of "our Lord the King and of his crown, and in defeating of the common "law;" 'it is agreed and assented, That from henceforth none of the 'King's subjects be compelled, neither by any mean constrained, to 'come nor to appear before the council of any lord or lady, to answer 'for his freehold, nor for any thing touching his freehold, nor for any 'other thing real or personal, that belongeth to the law of the land in any 'manner. And if any find himself grieved in time to come, contrary to 'this ordinance and agreement, he may complain to the Chancellor for 'the time being, and he shall give him remedy.'

[No. VIII.] 16 Richard II. c. 2.—The forfeiture of him that compelleth any Person to answer for his Freehold.

16 Richard II. c. 2. A confirmation of the statute of 15 R. 2. c. 12. with a penalty on the offenders.

"ITEM, Whereas at the last Parliament it was accorded and assented, "That none of the King's liege people from henceforth should be "bound, compelled nor constrained by any means, to come nor to "appear before any lord's or lady's council, there to answer of his free- "hold, nor of things which touch freeholds, nor of any other thing "real nor personal, which belongeth to the law of the land in any wise, "as by the statute thereof made more fully appeareth;" 'it is accorded 'and assented, That the said statute shall be firmly holden and kept; 'and if any lord or lady, or other of the King's liege people do to the 'contrary, they shall incur the pain of *xx.l.* to the King.'

[No. IX.] 4 Henry IV. c. 19.—No Officer of a Lord of a Franchise shall be Attorney in the same.

4 Henry IV. c. 19.

'ITEM it is ordained, That no steward, bailiff, nor minister of lords of 'franchises, which have return of writs, be attorney in any plea 'within the franchise or bailiwick whereof he is or shall be officer or 'minister, in any time to come.'

No. IXa. 2 Henry V. st. 1. c. 2.

[No. IX. a.] 2 Henry V. stat. 1. c. 2.—A *Corpus cum causa,* or *Certiorari* to remove him which is in execution at another man's suit.

ITEM, forasmuch as many men have been condemned in the courts of our Lord the King, and in the courts of his progenitors, as well within the city of *London,* as in other cities and boroughs within the realm of *England,* and by the virtue of such condemnations have been committed to the prison of our Lord the King, there to remain until they have made agreement to the plaintiffs to whom they were condemned; after by their suggestion made in the Chancery of our Lord the King, they have had divers writs called *certiorari* and *corpus cum causa,* out of the Chancery of our said Lord the King, directed to the sheriff, or keepers of the prisons where such persons condemned be holden to have their bodies, with the cause of imprisonment of the condemned aforesaid, in the Chancery, at the days contained in the said writs; after which writs, together with the body and the cause of the condemnation returned in the Chancery aforesaid, the said persons so condemned have been delivered in the Chancery aforesaid, by bail or by mainprize, or enlarged without bail or mainprize against the assent and will of the said plaintiffs, and without any agreement made to the said plaintiffs of the sums in the which they be condemned, against the law of the land; and so remain the said plaintiffs without remedy, in hindrance of the state of such plaintiffs, and in defeating of the judgments given in the courts aforesaid.

[No. X.] 17 Edward IV. c. 2.—For Courts of Pipowders.

17 Edward IV. c. 2. In a court of pipowders the plaintiff shall be sworn that the contract was made in the time and jurisdiction of the same fair.

" ITEM, Whereas divers fairs be holden and kept in this realm, some " by prescription allowed before justices in *Eyre,* and some by the " grant of our Lord the King that now is, and some by the grant of his " progenitors and predecessors; and to every of the same fairs is of right " pertaining a court of pipowders, to minister in the same due justice " in this behalf; in which court it hath been all times accustomed, that " every person coming to the said fairs, should have lawful remedy of " all manner of contracts, trespasses, covenants, debts, and other deeds " made or done within any of the same fairs, during the time of the " same fair, and within the jurisdiction of the same, and to be tried by " merchants being of the same fair; which courts at this day be misused " by stewards, under-stewards, bailiffs, commissioners, and other minis- " ters holding and governing the said courts of the said fairs, for their " private profit, holding pleas by plaints, as well of contracts, debts, " trespasses, and other feats done and committed out of the time of the " said fairs, or the jurisdiction of the same, whereof of truth they have " no jurisdiction, surmising the same debts, trespasses, covenants or " other deeds, to be done within the time of the fairs, or within the " jurisdiction of the same fairs, where of truth they were not so; and " sometime by the device of evil disposed people several suits be feigned, " and trouble them to whom they bear evil will, to the intent that they " for lucre may have favourable inquests of those that come to the said " fairs, where they take their actions. And whereas divers persons " coming to the same fairs be grievously vexed and troubled by feigned " actions, and also by actions of debt, trespasses, deeds and contracts " made and committed out of the time of the said fair, or the jurisdic- " tion of the same contrary to equity and good conscience, whereby the " lords of the same fairs do lose great profit by the not coming of divers " merchants to their fairs, which by this occasion do abstain, and also " the Commons be unserved of such stuff and merchandize which other- " wise would come to some fairs." ' Our said Lord the King considering ' the premisses, by the advice and assent of the Lords Spiritual and Tem- ' poral, and at the request of the Commons, in the said Parliament ' assembled, and by the authority of the same, hath ordained and esta-

No. X. 17 Edw. IV. c. 2.

'blished, That from the first day of *May* next ensuing, no steward, 'under-steward, bailiff, nor commissary, nor other minister of any such 'courts of pipowders, shall hold plea upon any action at the suit of any 'person or persons, unless the plaintiff or plaintiffs, or his or their 'attorney, in the presence of the defendant or defendants, do swear upon 'the Holy Evangelists, upon the declaration that the contract or other 'deed contained in the said declaration, was made or committed within 'the fair, and within the time of the said fair where he taketh his 'action, and within the jurisdiction and bounds of the same fair. And 'although that the plaintiff or plaintiffs by their oath do affirm the 'same, yet nevertheless the said defendant or defendants shall not be 'concluded by the same, but may answer and plead to the action, or in 'abatement of the plaints, and to proffer an issue that the same contract, 'trespass, or other deed contained in such declaration, whereupon the 'plaintiff or plaintiffs do declare, was not committed nor done within 'the time of the fair, and jurisdiction of the same, but out of the time 'of the fair, or at other places out of the jurisdiction of the same fair, 'according to the truth in this behalf. And if it be so tried, or that the 'plaintiff or plaintiffs, or their attornies, do refuse to take the oaths in 'the form aforesaid, that then the defendant or defendants shall be quite 'dismissed and discharged in that behalf out of the same court, the 'party plaintiff to take his remedy at common law, or other place con- 'venient, as shall to him seem good, notwithstanding this ordinance. 'And that every steward, under-steward, bailiff and commissary, or 'other minister, holding, ruling, or governing any of the said courts, 'that doth the contrary of this ordinance, shall forfeit for every default 'in this behalf, an hundred shillings, the one half to be to our Lord the 'King, and the other half to him that will in this behalf pursue his 'action upon this ordinance, by action of debt in his own name. And 'that writs of proclamation be in all good haste directed to every sheriff 'of every county of *England*, to cause this ordinance to be proclaimed 'in every fair within his county, as well within franchise as without. 'This Act to endure from the said first day of *May*, until the first day 'of the next Parliament. Provided always, That this Act, nor any thing 'comprised in the same Act, be hurtful or prejudicial to *William* now 'bishop of *Durham*, or to his successors, within the liberty and fran- 'chise of the bishopric of *Durham*.'

The penalty of a steward proceeding in a court of pipowders, if the plaintiff hath not deposed, that the contract, &c. was made in the time and jurisdiction of the fair. Made perpetual by 1 R. 3. c. 6.

[No. XI.] 1 Richard III. c. 6.—The Statute of 17 Edward 4. c. 2. rehearsed and made perpetual, *viz.* That in every Court of Pipowders the Plaintiff or his Attorney shall be sworn, &c.

[No. XII.] 11 Henry VII. c. 15.—Entering of Plaints in County Courts, Examining of Sheriffs, Execution of Precepts, Viewing of Estreats, and gathering of them.

11 Henry VII. c. 15. Several misdemeanours practised by sheriffs, &c. entering of plaints.

'WHEREAS great extortion is yearly used and had within divers 'counties of this realm of *England*, by the subtilty and untrue 'demeanor of sheriffs, under-sheriffs, shire-clerks, or any other officers 'holding and keeping the counties in the name of the sheriff, that is to 'say, if any man affirm a plaint before the sheriffs in the counties, or 'before any other of the said officers, the said sheriff, under-sheriff, or 'his shire-clerk, will enter or cause to be entered in their books, in the 'same plaintiff's name, divers and many plaints both of debt, trespass 'and covenant, at their pleasure, and unknowing to the same plaintiff 'in whose name the said plaints been affirmed, to the intent that if the 'defendant appear not at every shire-day, or court hanging the said 'plaint, he shall leese for his default made at every plaint fourpence: 'where divers times by covin between the said sheriffs, under-sheriffs,

No. XII. 11 Hen. VII. c. 15.

'shire-clerks, and the other aforesaid officers, the said defendants being 'never attached, summoned, nor warned according to the due form of 'the common law, wherefore the same parties, so put in suit, have no 'knowledge of any such suit had against them, and over that, the same 'sheriffs, under-sheriffs, and shire-clerks will cause divers plaints to be 'taken in the names of such persons that are not in plain life, where the 'said defendant shall have like loss as is before rehearsed; so that the 'unlawful demeanor of the said sheriffs, under-sheriffs, shire-clerks for 'the time being, and the bailiffs of the hundred, for their default and 'negligence in their offices, and covin between the said sheriffs, under-'sheriffs, shire-clerks, and other of the foresaid officers, causeth the 'amerciaments that be in the one year after the books be engrossed, to 'amount to great and importable sums of money, which sums of money 'been yearly levied of the poor commons in the said counties by the 'sheriffs, under-sheriffs, and shire-clerks, and other their deputies being 'of no substance, neither of havour, which deputies take and levy more 'by extortion than is contained in their estreats, to the express pillage 'and impoverishing of the said Commons.' Be it therefore enacted, ordained, and established by the King our Sovereign Lord, and by the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That no sheriffs, under-sheriffs, or shire-clerks hereafter, neither any person in their names, nor by their commandment, shall take and enter any plaints in their books in no man's name, unless the party plaintiff be in his proper person present in the court, or else by a sufficient attorney or deputy that is known to be of good name and disposition; and that the same party plaintiff shall find pledges to pursue his said plaint, such persons as are known there in the county; and that the party plaintiff shall have but one plaint for one trespass or contract. And if the said sheriffs, under-sheriffs, shire-clerks take and enter, or cause to be entered, any more plaints than the plaintiff supposeth that he hath cause of action against the defendant, that then the said sheriffs, under-sheriffs, shire-clerks, that do enter, or cause to be entered, any such plaints contrary to the said provision and ordinance, shall forfeit for every default *xl. s.* the one half thereof to be had to the use of our said Sovereign Lord the King, and the other part to him or them that will sue and prove the same matter by action of debt or information in the Exchequer. And over that, the justices of peace in the same counties, and every of them, shall have authority, upon complaint made by the party so unlawfully grieved, to examine the said sheriffs, under sheriffs, or shire-clerks, and plaintiffs; and if the said justices of peace, or one of them, find by their examination default in the said sheriffs, under-sheriffs, or shire-clerks, in entering of the said plaints deceitfully, for his or their advantage, as is before rehearsed, contrary to this present Act, that then the said sheriffs, under-sheriffs, and shire-clerks, shall be convict and attaint of the same offence, without further inquiry or examination, and that he shall forfeit upon the same examination *xl. s.* to the use of our Sovereign Lord the King for every default. And the said justices of peace that so shall take the examination, shall certify the same examination within a quarter of a year into the King's Exchequer, upon pain of *xl. s.* And furthermore, That the said sheriffs, under-sheriffs, and shire-clerks, make, or cause to be made, a sufficient precept to the bailiffs of the said hundreds, to attach, summon, or warn the defendants that are so in suit, to appear and answer to the said plaints; and if there be any default in the said bailiffs of the hundreds, in warning of the defendants to appear and answer to the said plaints commenced against them in their courts, or in executing their said office, that then the said bailiffs shall forfeit for every default unto our Sovereign Lord the King, *xl. s.* and to be attaint and convict thereof by like examination of the justices of peace, or any of them, as before is rehearsed. And that the same sheriffs, under-sheriffs, shire-clerks, and their deputies for the time being, shall make no estreats to levy the said sheriffs amerciaments, until such time that two justices of peace, whereof one shall be of the *quorum*, have had

No plaint shall be entered in the county court, but where the plaintiff or his attorney is present.

There shall be entered but one plaint for one cause.

A justice of peace may examine the offence, and certify it into the Exchequer.

The penalty of bailiffs of hundreds that do not execute their offices.

Two justices of peace shall view the sheriff's estreats.

the view and oversight of their books: and that the estreats be indented betwixt the said justices of peace, and the said sheriffs and under-sheriffs, and sealed with their seals, the one part to remain with the said justices, and the other part with the said sheriffs, or under-sheriffs, to the intent they may understand if any deceit be, or untrue demeaning in them, in making of their books; and that those persons which shall be gatherers of the same amerciaments, as bailiffs, or other officers, be sworn by the said justices, that they take no more money than is forfeited and contained in the estreats, sealed with the seals of the said justices of peace, upon the same pain of forfeiture as before is rehearsed; thereof the same gatherers to be convict by examination of the said justices of peace, or one of them, as before is rehearsed. Provided alway, That the said justices of peace shall be appointed and named at the general sessions after the feast of Saint *Michael* the Archangel, by him that is *custos rotulorum* of the said counties, or else by the eldest of the *quorum* in his absence, to have the oversight and controlment of the said sheriffs, under-sheriffs, and shire-clerks, and other of the said officers, and of the said sheriffs amerciaments: And the said justices of peace, upon suggestion, or information of the party so grieved, shall make like process as in an action of trespass, against the said sheriffs, under-sheriffs, or shire-clerks, and other the foresaid officers misdemeaning, as before is rehearsed, for to appear before them to answer to the said suggestion or information.

No. XII. 11 Hen. VII. c. 15.

Bailiffs shall be sworn to gather but what is due.

By whom and when the said justices shall be named.

Process awarded by the justices of peace against an offender.

[No. XIII.] 23 Henry VIII. c. 5.—The Bill of Sewers with a new Proviso, &c.

23 Henry VIII. c. 5.

'OUR Sovereign Lord the King, like a virtuous and most gracious Prince, nothing earthly so highly weighing as the advancing of the 'common profit, wealth, and commodity of this his realm, considering 'the daily great damages and losses which have happened in many and 'divers parts of this his said realm, as well by the reason of the out-'rageous flowing, surges, and course of the sea in and upon marsh-'grounds, and other low places heretofore through politic wisdom won 'and made profitable for the great commonwealth of this realm, as also 'by occasion of land-waters, and other outrageous springs, in and upon 'meadow, pastures, and other low grounds adjoining to rivers, floods, 'and other water courses; and over that, by and through mills, milf-'dams, wears, fishgarths, kedels, gores, gotes, floodgates, locks, and 'other impediments in and upon the same rivers and other watercourses, 'to the inestimable damages of the commonwealth of this realm, which 'daily is likely more and more to increase, unless speedy redress and 'remedy be in this behalf shortly provided: Wherein albeit that divers 'and many provisions have been before this time made and ordained, 'yet none of them are sufficient remedy for reformation of the premisses,' hath therefore by deliberate advice and assent of his Lords Spiritual and Temporal, and also his loving Commons, in this present Parliament assembled, ordained, established, and enacted, That commissions of sewers, and other the premisses, shall be directed in all parts within this realm from time to time, where and when need shall require, according to the manner, form, tenor, and effect, hereafter ensuing, to such substantial and indifferent persons as shall be named by the Lord Chancellor and Lord Treasurer of *England*, and the two chief justices for the time being, or by three of them, whereof the Lord Chancellor to be one.

How far the commission of sewers shall extend.

'II. *Henry* the Eighth, &c. Know ye, That forasmuch as the walls, 'ditches, banks, gutters, sewers, gotes, calcies, bridges, streams, and 'other defences, by the coasts of the sea, and marish ground, lying 'and being within the limits of A. B. or C. in the county or 'counties of or in the borders or confines of the 'same, by rage of the sea, flowing and reflowing, and by mean of the 'trenches of fresh waters descending, and having course by divers ways 'to the sea, be so dirupt, lacerate, and broken; and also the common 'passages for ships, balangers, and boats, in the rivers, streams, and

The form of the commission of sewers.

No. XIII. 23 H. VIII. c. 5.

The several causes of awarding the commission of sewers.

'other floods, within the limits of A. B. or C. in the county or counties 'of or in the borders or confines of the same, by mean of setting 'up, erecting, and making of streams, mills, bridges, ponds, fish-garths, 'mill-dams, locks, hebbing-wears, hecks and flood-gates, or other like 'lets, impediments, or annoyances, be letted and interrupted, so that 'great and inestimable damage, for default of reparation of the said 'walls, ditches, banks, fences, sewers, gotes, gutters, calcies, bridges, 'and streams; and also by mean of setting up, erecting, making, and 'enlarging of the said fish-garths, mill-dams, locks, hebbing-wears, 'hecks, flood-gates, and other like annoyances, in times past hath hap-'pened, and yet is to be feared that far greater hurt, loss and damage 'is like to ensue, unless that speedy remedy be provided in that 'behalf.

What things the commissioners of sewers are authorised to do.

'III. We, therefore, for that by reason of our dignity and prerogative 'royal, we be bound to provide for the safety and preservation of our 'realm of *England*, willing that speedy remedy be had in the premises, 'have assigned you, and six of you, of the which we will that A., B. and 'C., shall be three, to be our justices, to survey the said walls, streams, 'ditches, banks, gutters, sewers, gotes, calcies, bridges, trenches, mills, 'mill-dams, flood-gates, ponds, locks, hebbing-wears, and other impe-'diments, lets, and annoyances aforesaid, and the same cause to be 'made, corrected, repaired, amended, put down, or reformed, as case 'shall require, after your wisdoms and discretions; and therein as well 'to ordain and do after the form, tenor, and effect of all and singular 'the statutes and ordinances made before the first day of *March*, in the 'three and twentieth year of our reign, touching the premises or any of

Inquiry by whose defaults the annoyances come.

'them, as also to enquire by the oaths of the honest and lawful men of 'the said shire or shires, place or places where such defaults or annoy-'ances be, as well within the liberties as without (by whom the truth 'may the rather be known) through whose default the said hurts and 'damages have happened, and who hath or holdeth any lands or tene-'ments, or common of pasture, or profit of fishing, or hath or may 'have any hurt, loss or disadvantage by any manner of means in the 'said places, as well near to the said dangers, lets and impediments, as 'inhabiting or dwelling thereabouts, by the said walls, ditches, banks,

Assessing the person to be contributory to the charge.

'gutters, gotes, sewers, trenches, and other the said impediments and 'annoyances; and all those persons, and every of them, to tax, assess, 'charge, distrain and punish, as well within the metes, limits, and 'bounds of old time accustomed, or otherwise, or elsewhere within 'our realm of *England*, after the quantity of their lands, tenements and 'rents, by the number of acres and perches, after the rate of every per-'son's portion, tenure, or profit, or after the quantity of their com-'mon of pasture, or profit of fishing, or other commodities there, by 'such ways and means, and in such manner and form as to you, or six 'of you, whereof the said A., B. and C. to be three, shall seem most 'convenient to be ordained and done for redress and reformation to be 'had in the premises; and also to reform, repair and amend the said 'walls, ditches, banks, gutters, sewers, gotes, calcies, bridges, streams, 'and other the premises, in all places needful; and the same, as often, 'and where need shall be, to make new, and to cleanse and purge the 'trenches, sewers, and ditches in all places necessary; and further to 'reform, amend, prostrate and overthrow all such mills, streams, ponds, 'locks, fish-garths, hebbing-wears, and other impediments and annoy-

Appointing of bailiffs, collectors, surveyors, and other inferior officers.

'ances aforesaid, as shall be found by inquisition, or by your surveying 'and discretions to be excessive or hurtful; and also to depute and 'assign diligent, faithful, and true keepers, bailiffs, surveyors, collect-'ors, expenditors, and other ministers and officers, for the safety, con-'servation, reparation, reformation, and making of the premises, and 'every of them, and to hear the account of the collectors, and other 'ministers of and for the receipt and laying out of the money that shall 'be levied and paid in and about the making, reforming, repairing and 'amending of the said walls, ditches, banks, gutters, gotes, sewers, cal-'cies, bridges, streams, trenches, mills, ponds, locks, fish-garths, flood-

No. XIII. 23 H. VIII. c. 5.

'gates and other impediments and annoyances aforesaid; and to distrain 'for the arrearages of every such collection, tax, and assess as often as 'shall be expedient, or otherwise to punish the debtors and detainers 'of the same, by fines, amerciaments, pains, or other like means, 'after your good discretions; and also to arrest and take as many carts, 'horses, oxen, beasts, and other instruments necessary, and as many 'workmen and labourers as for the said works and reparations shall 'suffice, paying for the same competent wages, salary, and stipend in 'that behalf; and also take such and as many trees, woods, under- 'woods and timber, and other necessaries, as for the same works and 'reparations shall be sufficient, at a reasonable price, by you, or six of 'you, of the which we will that A., B., and C. shall be three, to be 'assessed or limited, as well within the limits and bounds aforesaid, as 'in any other place within the said county or counties near unto the 'said places; and to make and ordain statutes, ordinances, and provi- 'sions from time to time, as the case shall require, for the safeguard, 'conservation, redress, correction and reformation of the premises, 'and of every of them, and the parts lying to the same, necessary and 'behooful, after the laws and customs of *Rumney* Marsh in the county 'of *Kent*, or otherwise by any ways or means after your own wisdoms 'and discretions; and to hear and determine all and singular the pre- 'mises, as well at our suit as at the suit of any other whatsoever com- 'plaining before you, or six of you, whereof A., B., and C. shall be 'three, after the laws and customs aforesaid, or otherwise by any other 'ways or means after your discretions; and also to make and direct all 'writs, precepts, warrants or other commandments by virtue of these 'presents, to all sheriffs, bailiffs, and all other ministers, officers, and 'other persons, as well within liberties as without, before you, or six 'of you, whereof the said A., B. and C., to be three, at certain days, 'terms and places to be prefixed, to be returned and received; and fur- 'ther to continue the process of the same, and finally to do all and 'every thing and things as shall be requisite for the due execution of 'the premises, by all ways and means after your discretions: And there- 'fore we command you, that at certain days and places, when and 'where ye, or six of you, whereof the said A., B., and C. to be three, shall 'think expedient, ye do survey the said walls, fences, ditches, banks, 'gutters, gotes, sewers, calcies, ponds, bridges, rivers, streams, water- 'courses, mills, locks, trenches, fish-garths, flood-gates, and other the 'lets, impediments, and annoyances aforesaid, and accomplish, fulfil, 'hear and determine all and singular the premises in due form, and to 'the effect aforesaid, after your good discretions; and all such as ye 'shall find negligent, gainsaying, or rebelling in the said works, repara- 'tions or reformations of the premises, or negligent in the due execu- 'tion of this our commission, that ye do compel them by distress, fines, 'and amerciaments, or by other punishments, ways, or means, which to 'you, or six of you, whereof the said A., B., and C. shall be three shall 'seem most expedient for the speedy remedy, redress, and reformation of 'the premises, and due execution of the same; and all such things as 'by you shall be made and ordained in this behalf, as well within liber- 'ties as without, ye do cause the same firmly to be observed, doing 'therein as to our justice appertaineth after the laws and statutes of 'this our realm, and according to your wisdoms and discretions.

Distraining for the arrearages of the money assessed.

Taking of labourers, workmen and carriages, timber, and other necessaries.

To make statutes and ordinances.

Awarding of writs and precepts to sheriffs, bailiffs, and others.

To compel others to obey their orders.

'IV. Saved always to us such fines and amerciaments as to us thereof 'shall belong; and we also command our sheriff or sheriffs of our said 'county or counties of that they shall cause to come 'before you, or six of you, of the which A., B., and C. to be three, at 'such days and places as ye shall appoint to them, such and as many 'honest men of his or their bailiwick, as well within the liberties as 'without, by whom the truth may best be known, to enquire of the 'premises; commanding also all other ministers and officers, as well 'within liberties as without, that they, and every of them, shall be at- 'tendant to you in and about the due execution of this our commission. 'In witness whereof we have caused these our letters patents to be

Sheriffs to return before the commissioners such jurors as shall be fit for inquiry.

All other officers shall be attendant to the commissioners.

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'made. Witness ourself at *Westminster*, the day of in 'the year of our reign.'

V. And it is also enacted, That every such person as shall be named commissioner in the said commission, after he hath knowledge thereof, shall effectually put his diligence and attendance in and about the execution of the said commission, and before he shall take upon him the execution of the said commission, he shall take a corporal oath before the Lord Chancellor, or before such to whom the said Lord Chancellor shall direct the King's writ of *dedimus potestatem* to take the same, or before the justices of the peace in the quarter sessions holden in the shire where such commissions shall be directed; the tenor of which oath hereafter ensueth:

The commissioners shall take an oath. Enforced by 25 H. 8. c. 10.

The form of oath.

'Ye shall swear, That you, to your cunning, wit, and power, shall 'truly and indifferently execute the authority to you given by this com-'mission of sewers, without any favour, affection, corruption, dread, 'or malice to be borne to any manner of person or persons; and, as 'the case shall require; ye shall consent, and endeavour yourself for 'your part to the best of your knowledge and power, to the making of 'such wholesome, just, equal and indifferent laws and ordinances, as 'shall be made and devised by the most discreet and indifferent num-'ber of your fellows, being in commission with you, for the due re-'dress, reformation and amendment of all and every such things as 'are contained and specified in the said commission, and the same laws 'and ordinances to your cunning, wit, and power, cause to be put in 'due execution, without favour, meed, dread, malice, or affection; 'as God you help, and all saints.'

A confirmation of other statutes.

VI. And it is also enacted by the authority aforesaid, That all and every statute, act, and ordinance heretofore made concerning the premises, or any of them, as well in the time of our Sovereign Lord the King that now is, as in the time of any of his progenitors, kings of this realm of *England*, not being contrary to this present Act, nor heretofore repealed, from henceforth shall stand and be good and effectual for ever, and to be put in due execution, according to the true meaning and purport of the same.

The authority of the commissioners.

VII. And over that be it enacted, That the commissioners hereafter to be named in any of the said commissions, according to the purport and effect of the same commissions, have full power and authority to make, constitute and ordain laws, ordinances and decrees, and further to do all and every thing mentioned in the said commission, according to the purport, effect, words, and true meaning of the same; and the same laws and ordinances so made, to reform, repeal, and amend, and make new, from time to time, as the cases necessary shall require in that behalf.

The ordinances of commissioners upon those which refuse.

Extended to copyholdlands, 7 Ann. c. 10.

VIII. Provided alway, and it is enacted, That if any person or persons, being assessed or taxed to any lot or charge for any lands, tenements, or hereditaments, within the limits of any commission, hereafter to be directed, do not pay the said lot and charge according to the ordinance and assignment of the commissioners, having power of the execution of the said commission, by reason whereof it shall happen, the said commissioners having power of the execution of such commission, for lack of payment of such lot and charge, to decree and ordain the same lands, tenements, and hereditaments from the owner or owners thereof, and their heirs, and the heirs of every of them, to any person or persons for term of years, term of life, in fee-simple or in tail, for payment of the same lot and charge, that then every such decree and ordinance so by them made and ingrossed in parchment, and certified under their seals into the King's Court of Chancery, with the King's royal assent had to the same, shall bind all and every person and persons, that at the making of the same decree had any interest in such lands, tenements, or hereditaments, in use, possession, reversion, or remainder, their heirs and feoffees, and every of them, and not to be in any wise reformed, unless it be by authority of Parliament hereafter to be summoned and holden within this realm.

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IX. And also it is provided by authority aforesaid, That the same laws, ordinances, and decrees to be made and ordained by the said commissioners, or six of them, by authority of the said commission, shall bind as well the lands, tenements, and hereditaments of the King our Sovereign Lord, as all and every other person and persons, and their heirs, for such their interest as they shall fortune to have, or may have, in any lands, tenements, or hereditaments, or other casual profit, advantage, or commodity whatsoever they be, whereunto the said laws, ordinances and decrees shall in any wise extend, according to the true purport, meaning, and intent of the same laws.

The commissioners decree shall bind the land.

X. And it is furthermore by the authority aforesaid, established and enacted, That if any manner of person or persons, of what estate or degree soever he or they be of, that from henceforth do take upon him or them to sit by virtue of any of the said commissions, not being before sworn in form as is aforesaid, and according to the tenor of the oath before specified, or if any person so named and sworn do sit as is aforesaid, not having lands and tenements, or other hereditaments in fee-simple, fee-tail, or for term of life, to the clear yearly value of *xl.* marks above all charges to his own use, except he be resiant and free of any city, borough, or town corporate, and have moveable substance of the clear value of one hundred pounds, or else be learned in the laws of this realm in and concerning the same, that is to say, admitted in one of the four principal inns of court for an utter barrister, shall forfeit *xl.l.* for every time that he shall attempt so to do: the one half thereof to be to our Sovereign Lord the King, and the other half thereof to the use of him or them that will sue therefore by action of debt, bill, plaint, or information in any of the King's courts; in which action or suit no wager of law shall be admitted, nor any essoign or protection shall be allowed.

No man may sit being unsworn.

What land each commissioner shall have.

XI. And if any action of trespass, or other suit shall happen to be attempted against any person or persons for taking any distress, or any other act doing, by authority of the said commission, or by authority of any laws or ordinances made by virtue of the said commission, the defendant or defendants in any such action shall and may make avowry, conusance, or justification for the taking of the same distress, or other act doing touching the premises, or of any of them, alleging in such avowry, conusance, or justification, that the said distress, trespass, or other act whereof the plaintiff complaineth, was done by the authority of the commission of sewers for lot or tax assessed by the said commission, or for such other act or cause as the said defendant did by authority of the same commission, and according to the tenor, purport and effect of this present Act made the three and twentieth year of the reign of our Sovereign Lord King *Henry* the Eighth, without any expressing or rehearsal of any other matter or circumstance contained in this present Act, or any commission, laws, statutes, or ordinances thereupon to be made; whereupon the plaintiff shall be admitted to reply, that the defendant did take the said distress, or did any other act or trespass supposed in his declaration of his own wrong, without any such cause alleged by the said defendant; whereupon the issue in every such action shall be joined, to be tried by verdict of twelve men, and not otherwise, as is accustomed in other personal actions: And upon the trial of that issue, the whole matter to be given on both parties in evidence according to the very truth of the same.

Avowry or justification of a distress taken by reason of the commission of sewers.

XII. And after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant to recover treble damages by reason of his wrongful vexation in that behalf, with his costs also in that part sustained, and that to be assessed by the same jury, or writ to inquire of damages, as the cause shall require.

Damages with costs.

XIII. And it is also enacted, That every of the said commissioners shall have and perceive four shillings for every day that they shall take pain in the execution of this commission of sewers, and one clerk, by them to be assigned, two shillings for every day, of the rates, taxes,

Fees, &c.

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lots and wains that shall be assessed or lost by the authority of the said commission, and to be levied and paid by their discretions. And that the said commissioners, or six of them, shall have power and authority to limit and assign of the same rates, taxes, lots and wains, by their discretions, such reasonable sums of money to the said clerk, for writing of books and process concerning the premises, and to the collectors, expenditors, and such other as shall take pain in the due execution of the said commission, as by the discretions of the said commissioners, or six of them, shall be thought reasonable.

Commissions within the liberty of the duchy.

XIV. Provided alway, that whensoever and as often as such commission, as is afore limited, shall be made and directed to any person or persons, for the reformation and amendment of or in any of the premises specified in the said commission, within the fees, liberties or possessions of the Duchy of *Lancaster*, that then such commissioners as shall execute such commission, shall be always named and appointed by the discretion of the Lord Chancellor and Lord Treasurer of *England*, and the said two chief justices of either bench, and the Chancellor of the said duchy for the time being, or three of them, whereof the said Lord Chancellor and the Chancellor of the Duchy to be two; and that in every such case two commissions shall be awarded and made according to the tenor of the commission above expressed, one thereof under the great seal of *England*, and the other under the seal of the same duchy as before time hath been accustomed; any thing afore rehearsed in this Act to the contrary hereof notwithstanding.

The charge of the commissions.

XV. And it is further enacted, That the said commissions from time to time, as the case shall require, shall be had and obtained without any money, or other charge to be paid for the seals or writing of the same, unless it be to the King, two shillings and sixpence for the seal of every commission, as hath been accustomed, and for the writing and inrolling of any one commission, five shillings, and not above.

A commision of sewers shall endure three years. Altered by 13 Eliz. c. 9. s. 1.

XVI. And it is further enacted, That every commission to be made by authority of this Act shall endure and continue for the term of three years next after the *teste* of the commission; nevertheless, after any commission made and delivered out of the King's Court of Chancery, the King's Highness shall always, at his pleasure, by his writ of *supersedeas* out of his said Court of Chancery, at any time discharge as well every such commission as every commissioner that shall be made or named by authority of this Act; after which discharge the said commissioner shall have no power or authority to proceed in the execution of their commission, nor in any thing, by authority of this Act.

A commission or commissioner discharged by supersedeas.

How long the commissioners' decree shall endure. Altered by 13 Eliz. c. 9. s. 1.

XVII. Provided always, That such laws, acts, decrees, and ordinances as shall happen to be made by the said commissioners, according to the tenor of their commission, or by authority of this Act, shall stand good and effectual, and be put in due execution so long time as their commission endureth, and no longer; except the said laws and ordinances be made and engrossed in parchment, and certified under the seals of the said commissioners into the King's Court of Chancery, and then the King's royal assent be had to the same; (1) any thing contained in this present Act to the contrary hereof notwithstanding.

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(1) The stat. 23 Henry 8. c. 5. s. 17. having directed that "laws, acts, decrees, and ordinances" made by commissioners of sewers, shall stand good and be put in execution so long time as their commission endureth, and no longer, except "the said laws and ordinances" be engrossed in parchment, and certified under the seals of the commissioners into Chancery, and have the royal assent: and the stat. 13 Eliz. c. 9. having directed all commissions of sewers to continue in force for ten years, unless sooner determined by *supersedeas* or any new commission; and that all 'laws, ordinances, and constitutions," made by force of such commission, being written in parchment, indented, and under the seals, &c. shall, without such certificate or royal assent, continue in force notwithstanding the determination of the commission by *supersedeas*, until repealed or altered by new coimmissioners; and that such laws, ordinances, and constitutions, written in parchment, indented and sealed, &c. shall, without certificate or royal assent, continue in force for one year after the expiration of such commission by lapse of ten years from its teste. Held, first, that the laws, acts, decrees and ordinances mentioned in the statute of Henry 8., mean the same as the

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Commissions into a county palatine.

XVIII. Provided also, That whensoever and as often as such commission as is afore limited shall be made and directed to any person or persons for the reformation and amendment of or in any of the premises specified in the said commission, within the fees, liberties and possessions of the principality of *Wales*, the county palatine of *Chester*, or within the fees, liberties and possessions of any other place where there is liberty and jurisdiction of county palatine, That in every such case two commissions shall be awarded and made according to the tenor of the commission above expressed, one thereof under the great seal of *England*, and the other under the usual seal of the county palatine, in manner and form as is above provided for the Duchy of *Lancaster*; any thing afore rehearsed in this present Act to the contrary notwithstanding.

The King's royal assent shall be certified into the Chancery.

Altered by 13 Eliz. c. 9. s. 1.

XIX. And it is provided, and also enacted, That the royal assent limited to be had unto the laws and ordinances to be made by the said commissioners, as is above said, shall be certified into the said Court of Chancery under the King's privy seal; and that there shall not any sum of money be paid for the same privy seal; but for the writing of the same certificate under the said privy seal shall be paid to the writer thereof *ii.s.* and not above, nor no other nor greater sum for any thing touching or concerning the same certificate under the same privy seal.

Commissions in Wales and counties palatine.

XX. Provided alway, That the chancellors and such other as shall have the custody of the seals of the said principality of *Wales*, or the county palatine of *Chester*, or within the fees, liberties and possessions of any other place where there is liberty and jurisdiction of county palatine, upon reasonable request, and upon the sight of the commission under the King's great seal of his chancery, shall without delay make out another commission under the seal of the said county palatine, according to the tenor of the King's commission to them shewed under his great seal; and to those commissioners as shall be named by the Lord Chancellor, Lord Treasurer, and the two chief justices, or by three of them, whereof the Lord Chancellor to be one, except it be within the fees and liberties of the Duchy of *Lancaster*, within which fees and liberties the commissioners shall be named, and commissions made, as is afore ordained by this Act; any thing contained in the said Act, or in any proviso thereunto added and annexed to the contrary thereof notwithstanding. This Act to endure for twenty years.

Made perpetual by 3 & 4 Ed. 6. c. 8. and explained by 3 Jac. 1. c. 14.

[No. XIV.] 2 & 3 Edward VI. c. 25.—A Bill for keeping of County Courts.

2 & 3 Edw. VI. c. 25.

Sheriffs shall keep their county courts monthly.

'WHERE heretofore in the most part of all the shires and counties within this realm, the county court is and hath been usually 'kept and holden from month to month, and so at every month's end 'one county; yet albeit in some counties (though not many) the 'said county courts are holden from six weeks to six weeks, by 'force whereof the officers award out process as well for the King 'as process of the peace, out of the King's Bench, as also other com- 'mon process betwixt party and party, and the attornies and solicitors, 'who sue the same, not knowing the private custom of those particular

laws, ordinances, and constitutions, mentioned in that of Elizabeth; and, secondly, that a decree made by commissioners under a former commission which had expired by lapse of ten years, directing a sea-wall to be refounded which had been destroyed by a violent tempest and inundation, and the sums necessary for its construction to be advanced by those who were before bound to sustain it *ratione tenuræ*, (and who did advance the money accordingly) and that a rate should be made on the level for their reimbursement; (although such decree had been written in parchment, indented, and sealed, which this was not,) could not be enforced by commissioners under a new commission, issued more than a year after the expiration of the former commission; as to so much of it as remained unexecuted: though good to the extent to which it had been executed. And therefore the court refused a mandamus to the new commissioners to direct a rate to be levied on the level for the reimbursement directed by the decree. Rex *v.* Somerset Commissioners of Sewers, 9 East. Rep. 109.

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No. XIV. 2&3 Ed. VI. c. 25.

'shires, which have and use their counties to be holden every six weeks, 'give their process like return as in those shires which have common 'custom to hold and keep county courts every month; whereby the 'King's suits be not only deferred, the plaintiffs and demandants de- 'layed of their lawful actions and demands, but also the said plaintiffs 'and demandants thereby put to double cost and charge, to the great 'ignominy and slander of the law, incouraging of the offenders and 'transgressors, and to the continual impoverishing of all those who have 'cause of suit:'

County courts shall be kept monthly.

II. In consideration whereof, be it enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *October* next ensuing this present session of Parliament, no county court or courts hereafter to be kept within this realm shall be longer deferred but one month from court to court, and so the said courts from thenceforth shall be kept every month and none otherwise; any usage, custom, statute or law heretofore had or made to the contrary in any wise notwithstanding.

Where the county court Northumberland shall be kept.

III. And be it further enacted by the authority aforesaid, That the sheriff of *Northumberland* from thenceforth shall keep the county court of that shire in the town or castle of *Alnewick* and in none other place; any latter use lately begun and brought in to the contrary notwithstanding.

[No. XIV. a.] 43 Elizabeth, c. 5.—An Act to prevent Perjury and Subornation of Perjury, and unnecessary Expenses in Suits of Law.

43 Elizabeth, c. 5.

At what time a writ to remove a suit depending in an inferior court shall be delivered to the judge or officer of the same court.

'WHEREAS within divers cities and towns corporate and other 'places within this realm of *England*, and the dominions thereof, 'there are jurisdictions, customs, and privileges to hold plea in actions 'of debt, and other actions, plaints and suits between party and party, 'and divers of her Majesty's subjects do daily commence many ac- 'tions, plaints and suits in the said cities, towns corporate and places, 'according to the jurisdictions, customs and privileges of the said 'places: 'And many defendants in actions, plaints and suits there brought 'and commenced, will suffer the said actions, plaints and suits to be 'proceeded in and prosecuted there, until the cause between the plain- 'tiffs and them be at issue, and the jury sworn, and evidence given on 'the plaintiff's part, before the said defendant will deliver into the court 'where the said actions, plaints or suits are to be tried, writs formerly 'sued forth by them, to remove the cause there depending, into some 'one or other of her Majesty's courts of record at *Westminster*; which 'keeping back of the said writ is done by the defendant, to no other 'purpose or intent, but to put the parties plaintiffs to as great charges 'and expenses as they the said defendants can, and to know what proofs 'the parties plaintiffs can make for the proving of their issue, whereby 'the defendants that sued forth the said writs, may have longer time to 'furnish themselves with some false witnesses, to impugn those proofs 'which the plaintiffs have openly made by their witnesses and proofs, 'which is a great cause of perjury and subornation of perjury, and 'great expenses to the plaintiffs:'

II. For remedy whereof, be it enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from and after the end of this present session of Parliament, no writ or writs of *habeas corpus*, or any other writ or writs sued forth, or to be sued forth, by any person or persons whatsoever, out of any of her Majesty's courts of record at *Westminster*, to remove any action, suit, plaint or cause, depending, or to be depending, in any court or courts within any city or town corporate, or elsewhere, which have or shall have jurisdiction, power, or authority to hold plea in any action,

plaint or suit, shall be received or allowed by the judge or judges, or officer or officers of the court or courts wherein or to whom any such writ or writs shall be delivered (but that he and they shall and may proceed in the said cause and causes ready to be tried, as though no such writ or writs were sued forth or delivered to him or them) except that the said writ or writs be delivered to the judge or judges, officer or officers of the said court, before that the jury which is to try the cause in question between the party or parties plaintiffs, and the party or parties that sued forth the said writ or writs, or for whose benefit the said writ or writs is or shall be sued forth, have appeared, and one of the said jury sworn to try the said cause.

No. XIV. 43 Elizabeth, c. 5.

III. Provided always, That this Act shall continue no longer than until the end of the next Parliament. [3 Car. I. c. 4. continued until the end of the first session of the next Parliament, and farther continued by 16 Car. I, c. 4.]

[No. XV.] 1 James I. c. 5.—An Act to prevent the Over-charge of the People by Stewards of Court Leets and Court Barons.

1 James I. c. 5.

The steward of a court shall take no benefit of the lord's profits.

How the profits and perquisites of courts baron and leets have been collected.

Oppressions done to many for the private gain of stewards of courts.

'WHEREAS the King's most excellent Majesty, the Lords Spiritual and Temporal, and other his Highnesses subjects of this realm of *England* and *Wales*, have in divers places of the same many franchises, jurisdictions, privileges and liberties to keep court leets or court barons, for the true administration of justice, and to the punishing and suppressing of offences; the profits and perquisites of which courts have heretofore been used to be levied and collected by the bailiff or other minister of such court, and by him accounted for to his Highness progenitors, or other lords or ladies of such courts and manors, and as of right it ought so to be: But now by reason of the great increase of people, the said profits and perquisites of courts are grown to be of a better yearly value than in ancient time it hath been, divers that are now stewards of such courts have heretofore in their own names, or in the names of some other to their use, obtained and gotten divers grants of all the profits and perquisites of such courts whereof they are stewards, whereby many of his Majesty's subjects are unjustly vexed, and by grievous fines and amerciaments unduly punished, greatly to the wronging and impoverishing of the tenants and inhabitants where such stewards are, proceeding out of a greedy desire to make and obtain an undue and extraordinary gain to themselves:' It is therefore by the authority of this present Parliament established and enacted, That no steward, deputy steward, or other under steward of any the courts aforesaid, shall directly or indirectly, in his own name, or in the name of any other, from and after the expiration of one year next after the end of this session of this present Parliament, take, receive, or make benefit to his own use, in money, goods, or any other thing, to the value of twelve-pence or more, by virtue or colour of any demise or grant hereafter to be made of any the profits or perquisites, or amerciaments of any such courts whereof they are stewards, which rightfully shall belong to the lords of the same; upon pain that every steward offending contrary to the tenor of this present Act of Parliament, shall for every such his offence forfeit the sum of forty pounds, and to be disabled ever after to be steward of such court, or of any other; the one half of the forfeiture to be to our Sovereign Lord the King's Majesty his heirs and successors; the other half to any of his Majesty's subjects that shall complain in any of his highness courts of record, by action of debt, bill, plaint, or information; in which suit no essoign, protection, wager of law, or other dilatory plea shall be allowed.

A steward of a court shall not take benefit by the profit of the same court.

No. XVI.
1 James I. c. 14.

[No. XVI.] 1 James I. c. 14.—A Remedy for a Freeman of *London* to recover a Debt not exceeding Forty Shillings owing to him by another inhabiting within the said City or the Liberties: A Penalty if the Debtor do not appear before the Commissioners upon Warning; or if the Creditor or Debtor do not perform their order; or if the Creditor, being a Freeman of *London*, do sue any other Freemen out of the same City for a Debt under Forty Shillings. Repealed by 3 Jac. I. c. 15.

[This Act, which was repealed by stat. 3 Jac. I. c. 15. and other provisions substituted in its room, is the first which was passed for establishing the summary jurisdiction of a court of requests.]

[No. XVII.] 21 James I. c. 23.—An Act for avoiding of vexatious Delays, caused by removing Actions and Suits out of Inferior Courts.

21 James I. c. 23.

'WHEREAS there now are, and long time have been, divers courts of record in divers cities, liberties, towns corporate, and elsewhere, some of them being far remote from *Westminster*, others from the court of Grand Sessions in *Wales*, which were principally ordained for the ease and quiet of such as should have occasion to sue there for debts, duties, and wrongs, so that they might, with small expenses, receive justice according to the merits of their causes in those inferior courts, without being compelled to travel to *Westminster*, or the court of the Great Sessions in *Wales*: But of late divers of his Majesty's loving subjects, having for just and true debts, and other good and lawful causes, commenced suits in such inferior courts, and prosecuted their actions and suits many times ready for trial, and the same causes being for the most part but of small value, have been removed into some of his Majesty's courts at *Westminster*, or the court of the Great Sessions in *Wales*; and being remanded by *procedendo* into the same inferior courts where the action or suit was first commenced, the same have been again oftentimes removed into the same or other of his Majesty's courts at *Westminster*, or court of the Great Sessions in *Wales*, to the intolerable delay of justice, and great expenses of money, and loss and trouble, to those which justly and honestly by such actions and suits have sought only to recover or get satisfaction for debts, duties, or wrongs owing, due, or done unto them;'

No writ to remove a suit commenced in an inferior court shall be obeyed, unless it be delivered before issue or demurrer joined.

II. For remedy wherof, be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and by the Commons, in this present Parliament assembled, and by the authority of the same, That no writ or writs of *habeas corpus*, *certiorari*, or any other writ or writs, process or processes whatsoever, other than writs of error or attaint, to be sued forth after the end of this present session of Parliament, by any person or persons whatsoever, out of or from any of his Majesty's Courts at *Westminster*, or the court of the great sessions in *Wales*, or out of any other court or courts having or pretending to have power to award such writs or processes, to stay or remove any action, bill, plaint, suit, or cause brought, commenced, or depending, or hereafter to be brought, commenced, or depending, in any court or courts of record within any city, liberty, town corporate, or elsewhere, which have or shall have jurisdiction, power, or authority to hold plea in that action, bill, plaint, suit, or cause: The same cause of action, bill, plaint, or suit, arising or growing within the said city, liberty, town corporate, or jurisdiction, shall, after the end of this present session of Parliament, be received or allowed by the steward or stewards, judge or judges, or

officer or officers of the court or courts wherein or to whom any such writ or writs shall be directed and delivered; but that he and they shall and may proceed in the said cause or causes as though no such writ or writs were sued forth or delivered to him or them, except that the said writ or writs be delivered to the steward or stewards, judge or judges, officer or officers of the said court, before issue or demurrer joined in the said cause or causes so depending or to be depending in any such court of record in any city, liberty, town corporate, or elsewhere, having power to hold such plea, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant or defendants to such action or suit commenced.

A suit once remanded shall never afterwards be removed.

III. And be it further enacted by the authority aforesaid, That if any such action, bill, plaint, suit, or cause, which is or shall hereafter be brought, commenced, or depending in any such court of record in any city, liberty, town corporate, or elsewhere, shall, after the end of this present session of Parliament, be removed or staid by any such writ or writs, process or processes, to be sued forth or out of any of his Majesty's courts at *Westminster*, or the court of the great sessions in *Wales*, or any other court as aforesaid, that if afterwards the same action, bill, plaint, suit, or cause shall be remanded or sent back again by any writ or writs of *procedendo*, or other writ whatsoever; that then the said action, bill, plaint, suit, or cause, shall never afterwards be removed or staid before judgment, by any writ or writs whatsoever to be sued forth or out of any of his Majesty's said courts at *Westminster*, or the said court of great sessions in *Wales*, or any other court as aforesaid; any law, statute, custom, usage, or restraint, to the contrary thereof in any wise notwithstanding.

A suit when the thing indemand exceeds not five pounds, shall not be removed.

IV. And be it further enacted by the authority aforesaid, That if in any action, bill, plaint, suit, or cause, not concerning freehold or inheritance, or title of land, lease, or rent, which shall be brought commenced, or depending in any such court of record in any city, liberty, town corporate, or elsewhere, if it shall appear, or be laid in the declaration, that the debt, damages, or things demanded, doth or shall not amount to or exceed the sum of five pounds; that then such action, bill, plaint, suit, or cause, shall not be stayed nor removed into any of his Majesty's courts at *Westminster*, or other courts as aforesaid, by any writ or writs whatsoever, to be sued or prosecuted forth or out of his Majesty's said courts at *Westminster*, or other courts as aforesaid, other than writs of error or attaint; any law, statute, usage, custom, or restraint, to the contrary in any wise notwithstanding.

V. And be it further enacted by the authority aforesaid, That if any writ or writs whatsoever, shall be after the end of this present session of Parliament granted or sued forth or out of any of his Majesty's said courts at *Westminster*, or court of the great sessions in *Wales*, or other court, contrary to the intent and meaning of this present Act, that then it shall and may be lawful to and for the judge or judges, and officer or officers, to whom such writ or writs shall be directed or delivered, to disallow and refuse the same, and to proceed as if no such writ or writs had been granted or sued out or forth as aforesaid; any law, statute, usage, custom, or restraint, to the contrary in any wise notwithstanding.

This Act shall only extend to courts in liberties, &c. and when the steward is an utter barrister, &c.

VI. Provided always, That this Act shall extend only to such courts of record in cities, liberties, towns corporate, and elsewhere, and for so long time only as there is or shall be an utter barrister of three years standing at the bar of one of the four inns of court, that is or shall be steward, under steward, or deputy steward, town clerk, or judge, or recorder of the same inferior court, or that is or shall be from time to time assistant to such judge or judges of such inferior courts as shall not be utter barristers of such standing as is aforesaid, and there present, in which such actions, bills, plaints, suits, or causes is or shall be brought, commenced or depending, and not of counsel in any action, suit or cause then depending in the same inferior court; any thing in this present Act, or any law, or other statute, usage, custom, or restraint, to the contrary in any wise notwithstanding.

No. XVII. 21 J. I. c. 23.

This Act shall not extend to any foreign plea.

VII. Provided that this Act, or any thing therein contained, shall not extend to any action, bill, plaint, suit, or cause, wherein any such foreign or other plea shall be pleaded as could not be tried or determined within the jurisdiction of such inferior courts.

[No. XVIII.] 16 Charles I. c. 15.—An Act against divers incroachments and Oppressions in the Stannary Courts.

16 Charles I. c. 15.

Ed. I. Charter.

Explained 50 Edward 3.

'WHEREAS King *Edward* the First, of famous memory, did, for the amendment of the stannaries in the county of *Devon*, grant divers franchises and liberties to the tinners there: And whereas in the Parliament in the fiftieth year of King *Edward* the Third, upon the petition of the Commons of the county of *Devon*, certain branches and articles of the said charter were explained in manner following, that is to say, Whereas one article of the said charter is in these words following,' *viz.* "Sciatis nos ad emendationem stannariarum nostrarum in com. *Devon.* ad tranquillitatem & utilitatem stannatorum nostrorum prædictorum earundem, concessisse pro nobis et hæredibus nostris, quod omnes stannatores prædicti operantes in stannariis illis quæ sunt dominia nostra, dum operantur in eisdem stannariis, liberi sint & quieti de placitis nativorum, & de omnibus placitis & querelis curiam nostram & hæredum nostrorum, qualitercunque tangen'. Ita quod non respondeant coram aliquibus justiciariis vel ministris nostris seu hæredum nostrorum de aliquo placito seu querela infra prædictas stannarias emergen. nisi coram custode nostro stannariarum nostrarum prædictarum, qui pro tempore fuerit (except. placitis terr,' vitæ & membrorum) nec recedent ab operationibus suis per summonitionem alicujus ministrorum nostrorum, seu hæredum nostrorum, nisi per summonitionem communem dicti custodis nostri; & quod quieti sint de omnibus tallag'. Theolon. stallag. auxiliis et aliis custumis quibuscunque in villis, portubus, feriis, & mercatis infra com. prædict. de bonis suis propriis, &c." 'Whereupon the said Commons prayed a declaration, as followeth,'—"Requeste, Sur quoi plese declarer si auters persons que les esteynors overantz in les esteineryes averont et enjoyeront la franchise grante per la dite chartre du Roy desicome la dite chartre voet. Quod omnes stannatores prædicti operantes in stannariis illis, sint liberi, &c. Et autres persons que les overours cestassavoir leurs maistres que les louent & leurs servants & autres clayment mesme la Franchise. Et auxint plese declarer si les dites overours y averont les Franchises que in autres temps a quant ils averont in mesme lesteinery desicome la chartre voet; Dum operantur in eisdem stannariis sint liberi, &c." 'Upon which request, answer was made as followeth:'—"Respons. En droit de les dites paroles, operantes in stannariis illis, & dum operantur in eisdem stannariis, soient clerement entenduz de operariis laborantibus duntaxat in stannariis illis sine fraude & dolo, & non de aliis, nec alibi laborantibus." 'And whereas the said Commons prayed a farther declaration, as followeth.'—"Requeste, Item soit declarez, si le gardein de lesteinery puisse tenir plee inter estyeinor & forreyn de querele sourdante aillours que en les lieux ou ils sont overantz desicome la chartre voet, quod custos noster prædictus, vel ejus locumtenens teneat omnia placita inter stannatores prædictos emergen. & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis, & contractibus factis in locis in quibus operantur infra stannarias prædictas similiter emergen. &c. Quare il tient plee des tieux quereles sourdantz in chescune parte deins le dit counte." 'Upon which answer was in these words,' "*viz.* Resp. et en droit de ceste article, se ent extende la jurisdiction cleremente solone' les paroles del dit chartre, cestassavoir; in locis ubi iidem operarii operantur, &

" nemy aillours ne en autre manere." 'Which charter so declared, was 'repeated again; and in the eighth year of the reign of King *Richard* 'the Second, commanded to be put in execution.'

The like charter to tinners in Cornwall.

'And whereas the said King *Edward* the First made the like charter 'to the tinners in the county of *Cornwall*, which charter was in the fore-'said Parliament, upon the request of the Commons of the county of '*Cornwall*, declared in the same manner and words:

Declaration.

'III. And whereas the tinners of the counties of *Devon* and *Corn-'wall* have by virtue of the said charters enjoyed divers and great liber-'ties, and are quit from all tolls, tallages, aids and other customs in the 'vills, ports, fairs and markets within the said counties respectively: 'which great liberties do of right belong to the working tinner, working 'without fraud or deceit in the stannaries aforesaid, and not to any 'other nor elsewhere working, and were granted to the said tinners for 'their encouragement in their works: And whereas of late years

Abuse of liberties.

'sundry inhabitants within the said counties, and others, to entitle 'themselves to the said liberties, have by fraud and covin, for small or 'no considerations, bought and acquired, and do buy and acquire to 'themselves decayed tin-works, and small and inconsiderable parts in 'the same and other tin-works; which abuses are done principally to 'enable the said false and feigned tinners to vex and sue their neigh-'bours in the stannary courts, where for the most part the defendant is 'unjustly debarred his costs, although the cause be adjudged with him; 'and the jurisdiction of the said stannaries hath, contrary to ancient 'right and usage, and the said charters, been endeavoured to be ex-'tended out of the places where the tinners do work, through the whole 'counties of *Devon* and *Cornwall* respectively, which is no way for the 'benefit of his Majesty, but for the singular lucre of some private 'persons: And whereas by the said abuses great inconveniencies do 'follow, (that is to say) the inhabitants of the said counties are misera-'bly vexed, oppressed and imprisoned, his Majesty defrauded of his 'aids and customs, and the lords and owners of fairs, markets and 'other franchises, of their tolls and duties, and the government of the 'country exceedingly confounded and eluded, the said false and 'feigned tinners claiming when they list to be tinners, and when they 'list to be foreigners; besides, that if timely provision be not made, 'the certain decay of his Majesty's profits in the tin-works will ensue, 'for that the same being divided into so many hands and parts, cannot 'conveniently be set on work, nor contribution raised for the working 'of the same:'

The former declarations confirmed.

IV. Be it therefore enacted by his Majesty, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That the said declarations be henceforth held and duly observed; with this, That the words of the said charters and declarations, *in locis ubi operantur*, be expounded of the vill, tithing and hamlet where some tin-work in work is situate, and not elsewhere, and no longer than the same tin-work is or shall be in working: And if any person or persons that shall be sued in the said stannaries, shall swear or tender his or their oath in the said court where he or they shall be sued, that he or they are not, nor is, nor at time of the suit commenced was not, nor were a tinner or tinners, then such defendant or defendants shall be forthwith discharged of such suit, unless that the plaintiff or plaintiffs do forthwith make oath that the said plaintiff or plaintiffs is or are true and working tinners, without fraud or deceit, and that the cause of his or their suit arose within the said stannaries, or concerneth tin or tin-works: And if any person be not *re vera*, and without fraud, a working and labouring tinner, in or about some tin-work, set on work within one half year next before his suit, shall sue, prosecute, or implead, in any the said courts, or before the warden, vice-warden, or steward of the said stannaries, any person or persons, that is or are not a tinner or tinners at the time of such suit commenced, then the defendant and defendants, in every such case, shall have his and their action at the common law, against such person suing or prosecuting, wherein he shall recover ten pounds, and his damages and costs of suit:

In locis ubi operantur, how expounded.

None but tinners to be sued; unless byworking tinners.

Persons sued by others shall have their action.

No. XVIII. 16 C. I. c. 15.

Such action to be brought within two years.

Provided that such action be brought within two years next after the action or suit brought in the said stannary courts, or before the said warden, vice-warden, or steward.

Costs in stannary courts.

V. And be it declared and enacted, That in all cases where the plaintiff or defendant, plaintiffs or defendants, are to have costs by the laws or statutes of this realm, there also the said plaintiffs and defendants shall have the like costs in the stannary courts: And in regard that the said charters were granted for the ease and advantage of the tinners, and not for their disadvantage or oppression, and yet divers of them who, for special reasons, have desired to sue at the common law, have been restrained:

Tinners may sue foreigners at the common law.

VI. Be it declared and enacted, That it shall be lawful to and for the said tinners, if they think fit, to sue any foreigners at the common law; the said charter or any usage to the contrary notwithstanding.

Abuses of poor bailiffs in the stannaries.

'VII. And whereas the bailiffs of the said stannary courts are very 'numerous, and are persons of small or no credit; and yet upon their 'return that any person is become surety for any other upon arrest by 'process out of the said courts, such person who sometimes knows 'nothing of the matter, is by false returns of the said bailiffs, made 'liable to the debt or demand, which bailiffs, by reason of their 'poverty, are often not responsible, and so the party without re-'medy:'

How sureties may be sued.

VIII. Be it enacted, That no person or persons be charged or troubled at surety by any return of any bailiff or bailiffs of the said stannaries, unless that the person or persons returned surety or sureties shall in the presence of two witnesses subscribe or sign a note in writing, that such person or persons is or are become surety or sureties; which note shall mention the names of the plaintiffs and defendants in the suit, and the sum or damages in demand, and the nature of the action, and shall be signed or subscribed by the said witnesses, and returned and filed in the court out of which such process shall issue, and no bailiff or bailiffs of the said stannaries shall be admitted as witnesses to any such note.

'IX. And whereas in the said stannaries it is used, that if the bailiffs 'return any person arrested, that if such person make default at the 'day, he shall be condemned, and execution is suddenly awarded, 'when as often the party was not arrested:'

No defendant shall be condemned on bailiff's return, unless on a note subscribed by the party.

X. Be it further enacted, That no defendant shall be condemned upon such return for not appearing, unless also a note under the hand or sign of the party arrested, and subscribed by two such witnesses as aforesaid, be returned into the said court at or before the day of appearance; And the said bailiff or bailiffs shall take but fourpence for every such note as aforesaid; and it is provided, that none shall be bailed upon arrest there, till he give such note.

Rescous.

XI. And in case any of the said bailiff or bailiffs shall return a rescous against any person or persons, he or they shall be admitted to traverse the said return; which traverse, if it be found with him or them so traversing, then he or they shall be no further troubled or occasioned by reason of such return.

[No. XIX.] 7 Anne, c. 9.—An Act for giving the Commissioners of Sewers for the City of *London* the same Powers as the Commissioners of Sewers for Counties have: and to oblige Collectors for the Sewers to account.

[No. XIX. a.] 7 Anne, c. 10.—An Act for rendering more effectual the laws concerning Commissions of Sewers.

7 Anne, c. 10.

WHEREAS by the laws now in force concerning commissions of sewers, It is provided, That if any person or persons being assessed or taxed to any lot or charge for any lands, tenements or here-

ditaments within the limits of any such commission, do not pay the said lot and charge, according to the order and assignment of the commissioners, having power of the execution of the said commission, That then the said commissioners for lack of payment of such lot and charge, may decree and ordain the said lands and tenements, from the owner or owners thereof and their heirs, and the heirs of every of them, to any person or persons, for term of years, term of life, fee-simple, or fee-tail, for payment of the same lot and charge, the said decrees and ordinances to be executed in such manner, as by the said laws now in force is directed and appointed: And it is thereby provided, That the same decrees and ordinances shall bind all and every person and persons, that at the making of the same decree had any interest in such lands, tenements and hereditaments, in use, possession, reversion or remainder, their heirs and feoffees, and every of them; and shall also bind as well the lands, tenements and hereditaments of the King of *England*, as all and every other person and persons and their heirs, and such their interest, as they shall fortune to have in any lands, tenements and hereditaments, or other casual profit, advantage or commodity whatsoever they be, whereunto the said laws, ordinances and decrees shall in any wise extend, according to the true purport, meaning and intent of the said laws; But the said laws of sewers now in force, have been found defective, in that sufficient power and authority is not thereby given to commissioners of sewers, to make sale of copyhold or customary lands within the limits of their commission for the causes aforesaid; for remedy whereof, Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *March*, in the year of our Lord One thousand seven hundred and nine, It shall and may be lawful to and for the commissioners authorized by commission from her Majesty, her heirs and successors, or any six or more of them, to put in execution the laws now in force concerning sewers, for non-payment of any lot or charge, assessed or charged upon any copyhold or customary lands within the limits of their commission, and by the power and authority of the said commission of sewers, to decree and ordain the said copyhold or customary lands so charged from the owner or owners and their heirs, and the heirs of every of them, to any person or persons, for such estate and interest therein, as the said owner or owners thereof, or any claiming in remainder under them, at the time of such decree made, had in the same copyhold lands, tenements and hereditaments the said decrees to be made and executed, as decrees concerning freehold lands are, by the said laws now in force, to be made and executed.

No. XIX. a. 7 Anne, c. 10.

II. Provided always, That all and every person and persons, to whom any such sale of copyhold or customary lands or tenements shall be made, shall before such time as they or any of them shall enter, or take any profit of the same lands or tenements, agree and compound with the lords of the manors, of whom the same shall be holden, for such fines or incomes, as heretofore hath been most usual and accustomed to be yielded or paid therefore, and that upon every such agreement or composition, the said lord for the time being at the next court to be holden, at or for the said manors, shall not only grant to such vendee or vendees upon request, the same copyhold or customary lands or tenements by copy of court-roll of the said manors, for such estate or interest as to them shall be so decreed or sold, and reserving the ancient rents, customs and services, but also shall in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly.

III. And be it further enacted and declared, That it shall and may be lawful to and for the commissioners of sewers, or any six or more of them, by warrant under their hands and seals, to give authority to any person or persons to levy the sums of money by them from time to time to be assessed or taxed upon the lands, meadows, marishes or

No. XIX. a. 7 Anne, c. 10.

grounds, liable or chargeable with any sesses, taxes, impositions or charges, by authority of their said commission; by distress and sale of the goods of such person or persons that shall not pay or refuse to pay the same, and the overplus of the money arising upon such sale, after deduction of the reasonable charges of making such distress and sale, shall be restored to the owner or owners of the goods so distrained.

[No. XX.] 27 George II. c. 16.—An Act for making perpetual several Laws * * * * * * * * * and that all Acts made for erecting Courts of Conscience shall be deemed public Acts; and for other Purposes.

27 George II. c. 16.

'II. AND whereas many inconveniences have arisen by reason several Acts for erecting courts of requests or conscience in several 'cities, towns corporate and other places have not been declared to be 'public Acts;' Be it therefore enacted, That from and after the first day of *January*, One thousand seven hundred and fifty-five, all the Acts of Parliament for erecting courts of requests or conscience for the recovery of small debts in cities, towns corporate, and other places in this kingdom, shall be deemed, adjudged and taken to be public Acts, and shall be judicially taken notice of as such by all judges, justices and other persons whatsoever, without specially pleading the same.

All Acts for erecting courts of conscience deemed public Acts.

[No. XXI.] 29 George II. c. 19.—An Act to empower Judges of Courts of Record in Cities and Towns Corporate, Liberties and Franchises, to set Fines on Persons who shall be summoned to serve upon Juries in such Courts, and shall neglect to attend.

29 George II. c. 19.

'WHEREAS the city of *London*, and many other cities and towns 'corporate, liberties and franchises, within this kingdom, have by 'royal grants, or by prescription, certain courts of record holden within 'such cities and towns corporate, liberties and franchises respectively, 'for the trial of actions and suits arising within the limits or jurisdic-'tions of such cities and towns corporate, liberties or franchises respec-'tively: And whereas great inconveniences and delays frequently happen 'to the suitors in those courts, by reason that persons duly impanelled 'and summoned to serve upon juries in such courts, refuse or neglect 'to appear and serve upon the same: And whereas such inconveniences 'and delays principally arise from want of power in the judge or judges 'of such courts, to compel persons who are impanelled and summoned 'to serve upon juries, for the trial of causes depending in such courts, 'to attend, or to fine them for their not attending:' Wherefore be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* One thousand seven hundred and fifty-six, every person duly impanelled and summoned to serve upon any jury for the trial of any cause to be tried in any court of record, holden or to be holden within the said city of *London*, or in any other city or town-corporate, liberties or franchises, within the kingdom of *England*, who shall not appear and serve on such jury (after being openly called three times, and on proof being made on oath of the person so making default having been duly summoned) shall forfeit and pay for every such his default, such fine, not exceeding the sum of forty shillings, nor less than the sum of twenty shillings, as the judge or judges of the respective courts wherein any such default shall be made, shall, from time to time, deem reasonable to impose or set, unless some just cause for such defaulter's absence, shall be made appear by oath or affidavit, to the satisfaction of the judge or judges of the said

Persons summoned to serve on juries, not attending to forfeit not more than 40*s.* nor less than 20*s.*

respective courts wherein any such default shall from time to time be made.

II. And be it further enacted by the authority aforesaid, That if any person on whom any fine shall be imposed or set in pursuance of this Act, shall refuse to pay the same to the person or persons who shall be authorized by the judge or judges who shall impose or set any such fine, to receive the same, it shall and may be lawful for the judge or judges who shall have imposed or set any such fine, and he and they is and are hereby authorized and required, by warrant under his hand and seal, or their hands and seals, to cause all and every such fine which shall have been imposed or set by him or them as aforesaid, to be levied from time to time, by distress and sale of the goods and chattels of the person or persons on whom any such fine shall have been so imposed or set as aforesaid; and the overplus money, if any, which shall remain after payment of such fine, and deducting the reasonable charges of such distress and sale, shall be rendered to the person or persons whose goods and chattels shall have been so distrained and sold.

Fine to be paid to the proper officer.

III. And be it further enacted by the authority aforesaid, That every fine which shall be imposed or set in pursuance of this Act, shall, when received or levied, be paid by the person who shall receive or levy the same, to the proper officer of the city or town corporate, liberty or franchise, in which the court or courts was or were holden, wherein such fine so received or levied was imposed or set; to be applied to such uses, as issues set on jurors, or other fines set in courts holden within such city or town corporate, liberty or franchise, are by charter, prescription or usage applicable.

Limitation of actions.

IV. And be it further enacted by the authority aforesaid, That if any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this Act, then and in every such case, such suit or action shall be brought or commenced within six calendar months next after the matter complained of shall have been committed, and not afterwards; and that the defendant or defendants in every such action, shall and may plead the general issue, and give this Act and the special matter in evidence, on any trial to be had thereupon; and that the same was done in pursuance and by the authority hereof; and if upon the trial of any such action or actions, the jury shall find a verdict for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his or their action or actions; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover double costs, and have the like remedy for the same, as any defendant or defendants hath or have for costs of suit in other cases by law.

General issue.

Double costs.

[No. XXII.] 19 George III. c. 70.—An Act for extending the Provisions of an Act, made in the twelfth Year of the Reign of King *George* the First, intituled "An Act to prevent frivolous and vexatious Arrests:" and for other Purposes.

19 George III. c. 70.

12 Geo. I. c. 29.

'WHEREAS in and by an Act of Parliament, made in the twelfth year of the reign of King *George* the First, intituled, "An Act 'to prevent frivolous and vexatious Arrests," it is enacted, That from and 'after the twenty-fourth day of *June*, One thousand seven hundred and 'twenty-six, no person shall be held to special bail upon any process 'issuing out of any superior court, where the cause of action shall not 'amount to the sum of ten pounds, or upwards, nor out of any inferior 'court, where the cause of action shall not amount to the sum of forty 'shillings, or upwards: And whereas the power of arrest and imprison-'ment, or mesne process issuing out of such inferior court, where the 'cause of action does not amount to ten pounds, is found by experience 'to be attended with much oppression to great numbers of his Majesty's

No. XXII. 19 Geo. III. c. 70.

'subjects; for remedy whereof,' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *July*, One thousand seven hundred and seventy-nine, no person shall be arrested or held to special bail, upon any process issuing out of any inferior court, where the cause of action shall not amount to the sum of ten pounds, or upwards; but that the like copies of process shall be served, (for the service of which process a sum not exceeding two shillings and sixpence shall be allowed in costs,) and the like proceedings shall be had thereupon in such inferior court, in all cases where the cause of action shall not amount to the sum of ten pounds, or upwards, as are directed to be had, by the said recited Act, in such inferior court in all cases where the cause of action shall not amount to the sum of forty shillings; any law or usage to the contrary notwithstanding.

No person shall be arrested, or held to special bail, upon any process issuing out of an inferior court, for less than 10*l.*

II. And be it further enacted, That from and after the first day of *July*, One thousand seven hundred and seventy-nine, in all cases in such inferior court (having jurisdiction to the amount of ten pounds, or upwards) where the cause of action shall amount to ten pounds, or upwards, the like affidavit shall be made and filed of such cause of action, and the like proceedings shall be had thereupon, as are directed by the said recited Act to be had, where the cause of action amounts to the sum of forty shillings, or upwards, in such inferior court.

Proceedings in causes of 10*l.* or upwards, shall be the same as ordered in causes of 40*s.* or upwards.

'III. And whereas divers Acts of Parliament have passed for the recovery debts within certain districts and jurisdictions, which may have authorized the arrest and imprisonment of defendants, where the cause of action amounts to less than ten pounds;' be it enacted, That so much of such Act or Acts of Parliament as gives such power shall be, and the same is hereby repealed.

So much of acts as authorizes imprisonment for less than 10*l.* repealed.

'IV. And, forasmuch as persons served with process issuing out of inferior courts, where the debt is under ten pounds, may, in order to avoid execution, remove their persons and effects beyond the limits of the jurisdiction of such courts;' be it enacted by the authority aforesaid, That in all cases where final judgment shall be obtained, in any action or suit in any inferior court of record, it shall and may be lawful to and for any of his Majesty's Courts of Record at *Westminster*, upon affidavit made and filed therein of such judgment being obtained, and of diligent search and enquiry having been made after the person or persons of the defendant or defendants, or his, her, or their effects, and of execution having issued against the person or persons, or effects, as the case may be, of the defendant or defendants, and that the person or persons, or effects of the defendant or defendants, are not to be found within the jurisdiction of such inferior court, which affidavit may be made before a judge or commissioner authorized to take affidavits, and such superior court, to cause the record of the said judgment to be removed into such superior court, to issue writs of execution thereupon to the sheriff of any county, city, liberty or place, against the person or persons, or effects of the defendant or defendants, in the same manner, as upon judgments obtained in the said courts at *Westminster*; and the sheriff, upon every such execution, shall, and he is hereby authorized to detain the defendant or defendants, until the sum of twenty shillings be paid to him, or to levy the same out of the effects, according to the nature of the execution, for the extraordinary costs of the plaintiff or plaintiffs in the inferior court subsequent to the said judgment, and of the execution in the superior court, over and above the money for which such execution shall be issued.

Record of such judgment may be removed into the superior court, and writs of execution issued to the sheriff of any county, &c.

V. Provided always, and be it further enacted by the authority aforesaid, That from and after the first day of *July* One thousand seven hundred and seventy-nine, no execution shall be stayed or delayed upon or by any writ of error, or *supersedeas* thereon to be sued, for the reversing of any judgment given, or to be given, in any inferior court of record, where the damages are under ten pounds, unless such person or persons, in whose name or names such writ of error shall be brought,

Upon what conditions execution shall be stayed upon any writ of error, &c.

with two sufficient sureties, such as the court (wherein such judgment is or shall be given) shall allow of, shall first, before such stay made or *supersedeas* to be awarded, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment, to prosecute the said writ of error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the said writ of error be nonprossed) all and singular the debt, damages, and costs, adjudged or to be adjudged, and all costs and damages to be awarded for the same delaying of execution.

No cause under 10*l.* to be removed into a superior court, unless, &c.

VI. Provided also, and be it futher enacted, That no cause where the cause of action shall not amount to the sum of ten pounds, or upwards, shall be removed or removable into any superior court, by any writ of *Habeas Corpus*, or otherwise, unless the defendant, who shall be desirous of removing such cause shall enter into the like recognizance for payment of the debt and costs, in case judgment shall pass against him.

[No. XXIII.] 26 George III. c. 38.—An Act for regulating the Time of the Imprisonment of Debtors imprisoned by process from Courts instituted for the Recovery of small Debts; for abolishing the Claim of Fees of Gaolers, and others, in the Cases of such Imprisonment; and for ascertaining the Qualifications of the Commissioners.

26 George III. c. 38.

'WHEREAS by several Acts of Parliament now in force, and made to establish or regulate courts for the recovery of small debts in several cities, towns, districts, and places within this kingdom, there is no uniform time limited for the duration of the imprisonment of the defendant or debtor, against whom an execution, process of contempt, or precept in the nature of an execution, is issued for non-payment of such debts and costs, sum or sums of money, as by the order or orders of such courts such debtor or defendant is ordered or directed to pay, but such debtors or defendants are by such Acts of Parliament to be committed to prison, there to remain for an indefinite length of time, until he, she or they shall perform the order of the court or commissioners in that behalf; so that it frequently happens that a poor person, who is not of ability to pay a debt of or under forty shillings, is imprisoned for many months, and sometimes for years, without a possibility of being discharged: And whereas it often happens that poor persons, who are committed to prison by virtue of and in pursuance of the said Acts of Parliament for a trifling debt are kept in custody after they have been enabled to pay and discharge such debt, for gaol fees: And whereas an Act was made in the last Session of Parliament, intituled, "An Act for reducing the Time for the Imprisonment of Debtors committed to Prison, upon Prosecutions in Courts of Conscience in *London*, *Middlesex*, and the Borough of *Southwark*, to the same periods in each Court; and for abolishing Fees paid by those Debtors to Gaolers, or others, on account of such Imprisonment," the purposes of which Act have been found to be beneficial; and it is expedient that the like provisions should be extended to all other courts instituted for the recovery of small debts;' Therefore be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *September*, One thousand seven hundred and eighty-six, no person whosoever, being a debtor or defendant, and who has been or shall be committed to any gaol or prison by order of any court, or commissioners authorized by any Act or Acts of Parliament for constituting or regulating any court or courts for the recovery of small debts, where the debt does not exceed twenty shillings, shall be kept or continued in

25 Geo. 3. c. 45.

Limitation of the time of imprisonment of debtors committed by courts of conscience.

No. XXIII. 26 Geo. III. c. 38.

custody, on any pretence whatsoever, more than twenty days from the commencement of this Act, or from the time of his, her, or their commitment to prison; and where the original debt does not amount to or exceed the sum of forty shillings, more than forty days from the commencement of this Act, or from the time of his, her, or their commitment as aforesaid; and all gaolers, keepers, or turnkeys, are hereby directed and required to discharge such persons accordingly.

Debtors found guilty of a fraudulent concealment of their effects, may be imprisoned for a longer term.

'II. And, in order the more effectually to prevent persons summoned 'for debts to the said courts from the fraudulent concealment of their 'money or goods;' be it enacted by the authority aforesaid, That in case, upon the summons of any person for debt before the said court or commissioners, information of any such practice shall be given, such court or commissioners shall have power to hear evidence as to such fraudulent concealment; and in case it shall be proved to their satisfaction, upon the oaths of two or more credible witnesses (which oath the said court or commissioners are hereby empowered to administer, and which oath, if falsely taken, shall subject the party or parties so taking it to all the pains and penalties of wilfull and corrupt perjury), that any such debtor has money or goods which he has wilfully and fraudulently concealed; in that case, the court or commissioners shall have power to enlarge the aforesaid times of imprisonment for debts under twenty shillings, to any time not exceeding thirty days, and for debts under forty shillings, to any time not exceeding sixty days; which said circumstance or ground of further detention shall be specified in the said commitment: and the depositions of the witnesses shall be entered in a book to be kept for that purpose by the clerk to each respective court or commissioners.

Debtors not liable to pay gaol fees.

III. And be it further enacted by the authority aforesaid, That at the expiration of the said respective times of imprisonment as aforesaid, every such person or persons shall immediately be discharged and set at liberty, without paying any sum or sums of money, fee or fees, or other reward or gratuity whatsoever, to the gaoler, keeper, or turnkey of such gaol or prison, or others, by way of gaol fees, or discharge fees, or otherwise, on any pretence whatsoever; and every gaoler, keeper, or turnkey of any such gaol or prison, or others, demanding, taking, or receiving any fee or fees, sum or sums of money whatsoever, upon the discharge of any such person or persons, committed or to be committed to his custody as aforesaid, or keeping or detaining any such person or persons prisoner or prisoners, after the respective times limited by this Act, shall, for every such offence, forfeit and pay the sum of five pounds.

Penalty on gaolers demanding such fees.

Two justices may determine offences against this Act.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any two justices of the peace where the offence shall be committed, to hear and determine any offence against this Act; which said two justices of the peace are hereby authorised and required, upon any information exhibited or complaint made before them of such offence having been committed, to summon the party accused, and also the witnesses on either side, and to examine into the matter of fact; and upon due proof made thereof, by the oath of one or more credible witness or witnesses, or by the voluntary confession of the party, to give judgment or sentence for the penalty or forfeiture, as in and by this Act is directed, and to award and issue out their warrant under their hands and seals, for levying the said penalty of five pounds so adjudged on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed in four days, rendering to the party the overplus (if any); and where the goods of such offender cannot be found sufficient to answer the penalty, to commit such offender to prison, there to remain for the space of two months, unless such penalty shall be sooner paid and satisfied.

Penalties and forfeitures how to be applied.

V. And be it further enacted, That all forfeitures and penalties inflicted by this Act (the necessary charges for the recovery thereof being first deducted) shall be divided and distributed in manner following;

that is to say, one moiety thereof to be paid to the churchwardens or overseers of the poor, for the support and maintenance of the poor of the parish in which the offence shall be committed; and the other moiety to the person or persons who shall inform and sue for the same.

Informations to be exhibited within a limited time.

VI. Provided always, and be it enacted, That no person or persons shall be liable to be convicted before any justices of the peace, for any offence committed against this Act, unless complaint or information shall be made or exhibited against such person or persons within two calendar months after such offence committed.

Process not to issue against the body and goods of the same person.

VII. Provided also, and be it enacted, That it shall not be lawful for any such court or commissioners to issue any process against the body or bodies of any person or persons, where the party entitled to the benefit of any order, judgment, or decree, shall at the same time have obtained any warrant or process against the goods and chattels of the same person or persons.

Qualification of commissioners.

VIII. And be it further enacted, That, from and after the twenty-fourth day of *June* One thousand seven hundred and eighty-six, no person shall be capable of acting as a commissioner in the execution of any of the Acts for constituting such courts, unless such person shall be a householder within the county, district, city, liberty, or place for which he shall act, and shall be possessed of a real estate of the annual value of twenty pounds, or of a personal estate of the value of five hundred pounds: And if any person not being so qualified, shall presume to act as a commissioner in the execution of any of the Acts for constituting such courts, every person so acting shall forfeit and pay the sum of twenty pounds to any person or persons who shall sue for the same, to be recovered, with full costs of suit, by action of debt or on the case, wherein no essoign, protection, privilege, or wager of law, or more than one imparlance, shall be allowed; and the person so prosecuted shall prove that he is qualified as aforesaid, or otherwise shall pay the said penalty, upon proof being given of his having acted as a commissioner in the execution of any the Acts constituting such courts: Provided always, That such action or suit shall be commenced within six calendar months next after the offence committed, and shall be laid or brought in the county, city, or place, where the offence shall be committed, and not elsewhere.

Penalty on acting not being qualified.

[No. XXIV.] 58 Geo. III. c. 30.—An Act for preventing frivolous and vexatious Actions of Assault and Battery, and for slanderous Words, in Courts. [23d *May* 1818.]

WHEREAS it is desirable to prevent, as much as may be, frivolous and vexatious actions and suits of assault and battery, and for slanderous words, in inferior courts; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, in all actions or suits of trespass for assault and battery, to be commenced in any court having, or which by his Majesty's writ of *justicies*, may have jurisdiction to hold pleas in actions or suits to the amount of forty shillings (other than his Majesty's courts at *Westminster*, the court of Great Sessions for the principality of *Wales*, the court of Great Sessions for the county palatine of *Chester*, the Court of Common Pleas for the county palatine of *Lancaster*, or the Court of Pleas for the county palatine of *Durham*), if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action or suit shall have and recover only so much costs as the damages so

In actions of trespass for assault, if damages are given under 40*s.* plaintiff to recover only so much costs as damages so given.

No. XXIV. 58 Geo. III. c. 30.

given or assessed amount unto, without any further increase of the same; any law, statute, custom, or usage to the contrary in any wise notwithstanding.

If damages be laid under 40*s.* and the jury shall assess damages under 30*s.* the plaintiff shall recover only costs to the amount of damages given.

II. And be it further enacted, That in all actions or suits of assault and battery, or for slanderous words, to be sued or prosecuted in any court whatsoever which hath not jurisdiction to hold plea to the amount of forty shillings, in such actions or suits, if the jury upon the trial of the issue in such action or suit, or the jury that shall inquire of the damages do find or assess the damages under thirty shillings, then the plaintiff or plaintiffs in such action or suit shall have and recover only so much costs as the damages so given or assessed shall amount to, without any further increase of the same; any law, statute, custom, or usage to the contrary notwithstanding.

[No. XXV.] 60 Geo. III. and 1 Geo. IV. c. 14.—An Act to remedy certain Inconveniences in local and exclusive jurisdictions. [28th *February* 1820.]

1 George IV. c. 14.

WHEREAS the trial of capital offences before justices of peace, within local and exclusive jurisdictions not being counties, may be attended with inconvenience, and it is desirable that some remedy should be provided for the same; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the justices of the peace acting within and for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies and misdemeanors committed within the same, shall, from and after the passing of this Act, have full power within their respective limits, at their discretion, to commit any person duly charged before them, or any of them, with any capital offence committed within such limits, to the gaol of the county within which such town, liberty, soke, or place shall be situated, there to be tried at the next session of oyer and terminer or general gaol delivery, to be held in and for such county, in the same manner as if such offence had been committed within any other part of the same county, and as if such person had been committed by any justice of the same county, not being within such limits.

Power to justices, acting in any place not being a county, to commit offenders to the gaol of the county.

Justices may bind over witnesses by recognizance to give evidence at the sessions of oyer and terminer; and transmit depositions taken before them to the clerk of the crown, &c.

II. And be it further enacted, That in all cases where any justice or justices of the peace, under the authority of this Act, shall commit any person to the county gaol, it shall be lawful for such justice or justices, and he and they is and are hereby authorised and required also to bind over all necessary parties and witnesses by recognizance, to prosecute and give evidence against such offenders at the next sessions of oyer and terminer and general gaol delivery, and to transmit such recognizance, and all depositions taken before him or them relating to the charge, to the clerk of the crown, clerk of assize, or other proper officer, to be filed in the court of oyer and terminer and general gaol delivery for such county, to the intent that the same may be used or put in force by the judge or judges of the said court, as he or they shall deem proper, according to law.

Expenses of the prosecution to be paid by the town or place within which the offence shall be committed.

III. Provided always, and be it further enacted, That in all cases of any commitment to the county gaol, under the authority of this Act, all the expenses to which the county may be put by reason of such commitment, together with all such expenses of the prosecution and witnesses as the judge shall be pleased to allow by virtue of any law now in force, shall be borne and paid by the said town, liberty, soke, or place within which such offence shall have been committed, in like manner and to be raised by the same means whereby such expenses would have been raised and paid if the offender had been prosecuted and tried within the limits of such exclusive jurisdiction; and that

the Judge, or Court of Oyer and Terminer and general gaol delivery, shall have full power and authority to make such order touching such costs and expences as such Judge or court shall deem proper; and also to direct by whom and in what manner such expenses shall in the first instance be paid and borne, and in what manner the same shall be repaid and raised within the limits of such exclusive jurisdiction, in case there be no treasurer or other officer within the same, who by the custom and usage of such place ought to pay the same in the first instance.

No. XXVI. 6 Geo. IV. c. 23.

[No. XXVI.] 6 George IV. c. 23.—An Act for the better Regulation of the Sheriff and Stewart and Burgh Courts of *Scotland*.—[20th *May* 1825.]

WHEREAS by an Act made in the twentieth year of the reign of His Majesty King *George* the Second, intituled *An Act for taking away and abolishing the Heritable Jurisdictions in* Scotland, *and making Satisfaction to the Proprietors thereof, and restoring such Jurisdictions to the Crown; and for making more effectual Provision for the Administration of Justice throughout that Part of the United Kingdom, by the King's Courts and Judges there*, the Court of Session in *Scotland* is directed and required to take into their consideration what fees they shall judge reasonable to be paid to the clerks or other officers officiating in the Circuit Courts, or in the Courts of Sheriffs or Stewarts, in civil causes, and regulate the same by one or more Act or Acts of Sederunt, on or before the twenty-fifth day of *March* one thousand seven hundred and forty-eight, which shall be binding upon all parties concerned, unless and until the same shall be altered by Act of Parliament; and the Court of Justiciary shall in like manner take into their consideration what fees they shall judge reasonable to be paid to the clerks or other officers officiating in the Circuit Courts, or in the Sheriff or Stewart Courts, in criminal cases, and shall regulate the same by one or more acts of adjournal, on or before the said twenty-fifth day of *March*, which shall in like manner be binding on all parties concerned, unless or until the same shall be altered by Act of Parliament: And whereas, pursuant to the foresaid Act of His said Majesty King *George* the Second, the Lords of Session, by Act of Sederunt, passed on the sixteenth day of *March* one thousand seven hundred and forty-eight, did regulate the fees payable to the said officers in civil causes; and also the Court of Justiciary in like manner, by act of adjournal passed on the twenty-first day of *March* one thousand seven hundred and forty-eight, regulated the fees payable to the said officers in criminal causes: And whereas no power was given by the above-recited Act to revise from time to time the fees so regulated, and the same have become in consequence unsuitable: And whereas by a warrant under the sign manual of His Royal Highness the Prince Regent, acting in the name and on the behalf of His late Majesty King *George* the Third, dated the eighth day of *February* one thousand eight hundred and fifteen, Commissioners were appointed for inquiring into the duties salaries and emoluments of the several officers clerks and ministers of justice of the courts of *Scotland*, and for reporting what regulations might be fit to establish respecting the same; which Commissioners have accordingly made several reports, which have been laid before Parliament; and in which it is recommended that certain regulations with respect to fees and otherwise should be made in regard to the Sheriff or Stewart Courts in *Scotland*; and it is therefore expedient that power should be given to the said Court of Sessions and Justiciary, to revise the foresaid Acts of Sederunt and Adjournal respectively, and to amend and regulate the said fees in the said Sheriff and Stewart Courts, and also in the Burgh Courts in *Scotland*: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority

20 G. II. c. 43.

No. XXVI. 6 Geo. IV. c. 23.

of the same, That power shall be given to the Court of Session in *Scotland*, and the said court is hereby directed required and empowered to revise the said Act of Sederunt passed on the said sixteenth day of *March* one thousand seven hundred and forty-eight, and of new to take into their consideration what fees they shall judge reasonable hereafter to be exacted by the clerks, or by the practitioners or officers in the Courts of Sheriffs and Stewarts, in civil causes; and in all the various departments of business in use to be exercised by them, or which may be hereafter from time to time committed to them, and to regulate the same by one or more Act or Acts of Sederunt to be passed from time to time as the court shall see cause, the said court in so doing always taking into consideration the report of the said Commissioners herein-before mentioned in that behalf; and the Court of Justiciary are hereby directed required and empowered in like manner to revise the said Act of Adjournal passed on the twenty-first day of *March* one thousand seven hundred and forty-eight, and of new to take into their consideration what fees they shall judge reasonable hereafter to be paid to the clerks practitioners or officers in Sheriffs or Stewarts Courts in criminal causes, and to regulate the same, as also the course of proceeding in criminal causes before the same, by one or more Act or Acts of Adjournal to be passed by them from time to time as they shall see cause; which fees, as regulated by the said courts respectively, shall be binding on all parties concerned, unless or until the same be altered by any new Act or Acts of Sederunt or Adjournal, which the said Court of Session or Court of Justiciary may see proper and necessary to pass in time coming.

Courts of Session and Justiciary to revise Act of Sederunt and Act of Adjournal made in 1748, as to fees in Sheriffs' and Stewarts' Courts.

Court of Session to frame Regulations as to abridging Extracts, and for the Consignation of money.

II. And be it enacted, That the said Court of Session shall and they are hereby authorized and required to frame, or to cause to be framed, proper and suitable regulations for abridging the forms of extract of the decrees of the said Sheriff and Stewart Courts, and also for consignation in a public bank or banking company of monies received by the Sheriff or Stewart clerk, or any other person, by reason of any proceeding in any such Sheriff or Stewart Court, regard being always had to the forms for extract prescribed by an Act passed in the fiftieth year of the reign of His late Majesty King *George* the Third, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *and for the Regulation of certain Parts of the Proceedings of that Court:* Provided always, that during the lifetime of any person at present holding for life the office of clerk in any such court, or so long as any such clerk shall hold his office, whose emoluments may be affected by any such regulations or table of fees, no such clerk shall be bound to accept the same in lieu of the fees or emoluments to which he is now legally entitled, unless he thinks fit so to do; and all such regulations and fees so to be framed and settled, shall be established in such manner as to be postponed during the lifetime of any such clerk, or so long as he shall hold the same, unless such clerk shall at any time agree to accept the fees so to be settled and fixed, as appertaining to his office, in lieu of the fees and emoluments to which such clerk is now legally entitled, in which case he shall thereafter be bound and obliged to accept the same.

50 G. 3. c. 112.

Five Sheriffs to be appointed to report Regulations.

III. And for the better accomplishing the purposes aforesaid, be it enacted, That so soon as conveniently may be after the passing of this Act, the said Court of Session shall, and the said court is hereby directed and required to appoint, by a commission, duly executed by that court, five Sheriffs depute, for the purpose of reporting to the said court, and to the said Court of Justiciary respectively, such regulations and such tables of fees in the several Sheriff or Stewart Courts in *Scotland*, as in their opinion ought to be established therein; the said court in so doing taking into consideration the reports of the said commissioners in that behalf.

Whereupon Regulations to be established by Act of Sederunt.

IV. And be it enacted, That after a report or reports shall be made by the said five Sheriffs to the said Court of Session and Court of Justiciary respectively, as to the several matters and things upon which they shall be directed to report, it shall and may be lawful for the said courts, or either of them, if they think fit, to require explanations or information relative to any part of such report or reports, and to have conferences

thereupon with the said Sheriffs; and after being well and ripely advised in that behalf, and after having afforded an opportunity for all persons interested to be heard if they think fit, and also His Majesty's Advocate in behalf of the public, it shall and may be lawful for the said Court of Session, by any Act or Acts of Sederunt, to make and establish rules and regulations, and a table of fees for each of the said Sheriff or Stewart Courts in civil causes, and the several persons holding offices and discharging duties therein, or persons practising before the same, with respect to all or any of the matters and things aforesaid; and in like manner it shall and may be lawful for the Court of Justiciary, by any Act or Acts of Adjournal, to make and establish such rules and regulations, and a table of fees for each of the said Sheriff and Stewart Courts in criminal causes, and the several persons holding offices or discharging duties therein in such cases, and all persons practising before the same therein.

Copy of such Act to be transmitted to the Secretary of State, and laid before Parliament.

V. Provided always, and be it enacted, That a copy of every such Act of Sederunt and Act of Adjournal, together with every regulation and table of fees to which it may or shall refer, shall be transmitted by the Lord President of the Court of Session and Lord Justice Clerk, respectively, to His Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament, at or immediately after the commencement of the then next Session thereof; and after the expiration of three calendar months after the first day of such Session, every such Act of Sederunt or Act of Adjournal, and regulation and table of fees established thereby, shall become in force; and thereafter every such fee shall, according to the terms of such Act of Sederunt or Act of Adjournal, be and be deemed and taken to be a legal fee, and payable and receivable as such in the manner therein directed, and no other fee shall be held to be legal or payable in any case whatsoever; regard being always had to the provision hereinbefore made with respect to any clerk in any of the said courts holding his office for life, and without prejudice nevertheless to the payment of any fee specially established by any Act or Acts of Parliament, as applicable to any particular charge or description of causes to which any such Act shall or may relate.

Sheriff Clerk to discharge his Duties in Person.

VI. And be it enacted, That every person who has been appointed since the first day of *August* one thousand eight hundred and fourteen, or who shall hereafter be appointed a clerk in the said Sheriff or Stewart Courts, shall discharge the duties of the said office personally.

Regulations to extend to Burgh Courts.

VII. And be it further enacted, That every such Act of Sederunt, and every such Act of Adjournal, and the regulations thereby made, and the table of fees thereby established for the said Sheriff and Stewart Courts, shall apply to and receive effect in the Courts of Royal Burghs in *Scotland*, equally as in the Sheriff and Stewart Courts in *Scotland*; and the same shall extend to every person holding any office, or discharging any duty, or practising before any such Burgh Court: Provided always, that the present clerks of Royal Burghs shall have the same option in regard to accepting such table of fees, which is declared by this Act to be competent to sheriff and stewart clerks.

Present Clerks of Burghs to have the Option of Acceptance.

Copies of Acts of Sederunt and Adjournal to be transmitted to Sheriff and Burgh Courts.

VIII. And for the better guidance of all parties concerned, be it enacted, That so soon as any Act of Sederunt or Act of Adjournal shall have been transmitted to the Secretary of State for the Home Department, as before directed, the Lord President and the Lord Justice Clerk respectively shall cause a copy of every such Act of Sederunt or Act of Adjournal to be transmitted to the Sheriff or Stewart of every County and Stewartry, and to the Magistrates of every Royal Burgh in *Scotland*.

Qualification of Sheriffs or Stewarts Substitutes.

IX. And be it further enacted, That from and after the passing of this Act no person shall be appointed a Sheriff or Stewart substitute of any county or stewartry in *Scotland*, who shall not be an advocate of three years' standing at the least, or a clerk to His Majesty's signet, or a solicitor before the Supreme Courts in *Scotland*, or a procurator admitted to practise before a Sheriff Court in *Scotland*, and who shall not have been admitted to practise as such clerk to the signet, solicitor or procurator, for at least

No. XXVII. 6 Geo. IV. c. 24.

three years previous to his appointment; and that no commission appointing any such person a sheriff or stewart substitute shall be valid, or enable any such person to do any act by virtue thereof, unless and until there shall be annexed thereto a certificate under the hands of the Lord President of the Court of Session, and the Lord Justice Clerk, bearing, that such person is duly qualified, and capable to discharge the duties of the said office, which certificate, after due inquiry made, the said Lord President and Lord Justice Clerk are hereby required either to grant or to refuse.

Sheriffs or Stewarts substitute not to act as Procurator before any in their County Court, or be in partnership with any person so practising.

X. And be it further enacted, That in addition to the disqualification to which sheriffs and stewarts substitute are subject by an Act passed in the twenty-first year of the reign of his late Majesty, intituled *An Act for the more effectual Trial of High Treason and Misprision of High Treason in the Highlands of* Scotland, *and for abrogating the practice of taking down the Evidence in Writing in certain criminal Prosecutions, and for making some further Regulations relating to Sheriffs Depute or Stewarts Depute and their Substitutes; and for other purposes therein mentioned*, no Sheriff or Stewart substitute shall act directly or indirectly as a procurator before any court in the county or stewartry of which he is Sheriff or Stewart substitute, or shall be in partnership with any person so practising.

[No. XXVII.] 6 George IV. c. 24.—An Act for the more easy Recovery of small debts in the Sheriff Courts in *Scotland*.—[20th *May* 1825.]

WHEREAS it is expedient to render the recovery of small debts more easy cheap and expeditious in the Sheriff Courts in *Scotland*: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Sheriff may hear and determine Civil Causes for Sums under a certain amount in a summary manner.

That from and after the passing of this Act, it shall be lawful for any Sheriff in *Scotland*, within his county, to hear try and determine all civil causes and complaints that may be competently brought before him, wherein the debt or demand shall not exceed the value of eight pounds sterling, exclusive of expences and fees of extract, in a summary way, as more particularly herein-after mentioned.

Pursuers to proceed upon Petition in such Causes, according to form set forth in Schedule (A.)

II. And be it enacted, That all such causes, the pursuer whereof shall choose to have the same heard and determined according to the summary mode herein-after provided, shall proceed upon petition or complaint agreeable to the form in Schedule (A.) subjoined to this Act, stating shortly the origin of debt or ground of action, and concluding against the defender; which petition or complaint shall have a warrant annexed thereto, agreeable to the form in the said Schedule (A.); which warrant, being signed by the sheriff clerk, shall be a sufficient authority for any sheriff's officer for summoning the defender to appear and answer at the next Sheriff Court, the same not being sooner than the sixth day after the date of the citation, and also for summoning witnesses and havers for both parties: Provided always, that a copy of the said petition or complaint, with the citation annexed, and also a copy of the account, document of debt or state of the demand, with the names and designations of the witnesses and havers, and a statement of other means of proof, shall be delivered at the same time with the copy of the said petition, by the sheriff's officer to the defender personally, or at his dwelling place; in which last case, if the defender shall not appear, he shall be cited a second time personally, or at his dwelling place, upon the words *de novo* being either subjoined to the original petition, and signed by the sheriff clerk, or written in the procedure book kept by the clerk, and signed by the Sheriff, to appear at the next court, which shall not be sooner than upon the sixth day after the date of the said citation; and if the defender has been cited for the first time to a diet of court, not sooner than twelve free days from the date of the citation, it shall be lawful for the Sheriff's officer, in case the

Copy of such Petition, with Citation annexed, to be delivered by sheriff's officer to Defender.

defender shall not have been personally found at the time of the first citation, to cite him a second time, either personally or at his dwelling place, to the same diet of court on the authority of the original warrant, and without previously returning an execution of the first citation; provided that such second citation shall not be given sooner than upon the sixth day after the date of the first citation, nor later than upon the sixth day before the diet of court to which the defender is so cited for the second time; and the officer summoning shall in all cases return an execution of citation, signed by him, or shall appear and give evidence upon oath of his having duly cited the defender in manner aforesaid.

Officer of Court to lodge written Execution in Clerk's Hands, when required by Pursuer or Defender to cite Persons as Witnesses.

III. And be it enacted, That where an officer of court shall be required by any party, whether pursuer or defender, to cite any persons as witnesses or havers, he shall be obliged to lodge a written execution of every such citation in the clerk's hands, at or before the diet of court to which the witnesses have been summoned, or otherwise to verify in court the execution of citation; and if any witnesses or havers cited shall fail to appear, it shall be competent to the party or parties for whom they are summoned to apply for a new warrant to compel their attendance at the next court, or any subsequent court to which the case may be adjourned; which warrant shall require them to attend to give evidence under a penalty not exceeding forty shillings, which shall be awarded by the court, unless a reasonable excuse be offered and sustained, and shall be made payable to the party at whose instance the witness was cited, to be recovered in the same manner as other sums under this Act, without prejudice always to letters of second diligence for compelling witnesses and havers to attend, as at present competent.

Penalty for not appearing after having been cited by such Officer.

Sheriff to hear Parties vivâ voce, and examine Witnesses upon Oath.

IV. And be it enacted, That when the parties shall appear, the Sheriff shall hear them *vivâ voce*, and examine witnesses or havers upon oath, and also the parties by declaration, or upon oath; and no procurators solicitors or any persons practising the law, shall be allowed to plead for them, *vivâ voce*, without leave of the court, nor shall any of the pleadings, arguments, minutes, or evidence be reduced to writing, or be entered upon any record, unless with leave of the court first had and obtained, in consequence of any difficulty in point of law, or special circumstances of any particular case: Provided always, that where the Sheriff shall order any pleadings, arguments, minutes, or evidence to be reduced to writing, every case in which such order shall be made shall thenceforth be conducted according to the forms and proceedings in use before the passing of this Act, and shall be disposed of in all respects as if this Act had not been passed.

No Solicitor to plead for Parties, unless with Leave of Court first obtained.

Defender failing to appear, shall be held as confessing the Debt.

V. And be it enacted, That if a defender who has been duly cited personally, or by two citations at his dwelling place, shall fail to appear personally, or by one of his family, or by such person as the Sheriff shall allow, he shall be held as confessing the debt or justice of the demand, and decree shall pass against him, unless a sufficient excuse for a delay shall be stated; in which case and at all times, on account of the absence of witnesses, or any other good reason, it shall be competent for the Sheriff to adjourn any cause to the next or any other court day, and to order the parties and witnesses then to attend.

Where Decree pronounced in absence of Defender, he may obtain Warrant to sist Execution till next Court Day.

VI. And be it enacted, That where a decree has been pronounced in absence of a defender, it shall be competent for him, upon consigning the sum decerned for in the hands of the clerk, at any time before the days of the charge elapse, to obtain from the clerk a warrant, signed by him, sisting execution till the next court-day, or to any subsequent court day to which the same may be adjourned, and containing authority for citing the pursuer, witnesses and havers for both parties; and the clerk shall be bound to certify to the Sheriff, on the next court day, every such application for re-hearing and sist granted; which warrant, being duly served upon the pursuer personally, or by two citations at his dwelling place, in the manner provided in other cases by this Act, shall be an authority for re-hearing the cause; and in like manner, where absolvitor has passed in absence of the pursuer, it shall be competent for him at any time within one calendar month thereafter, upon consigning in the

No. XXVII. 6 Geo. IV. c. 24.

hands of the clerk the sum awarded by the Sheriff in his decree of absolvitor as the expences for the defender and his witnesses, to obtain a warrant, signed by the clerk, for citing the defender and witnesses for both parties; which warrant, being duly served upon the defender personally, or by two citations at his dwelling-place, in the manner provided in other cases by this Act, shall be an authority for re-hearing the cause as hereby provided in the case of a re-hearing, at the instance of the defender, the said sum of expences awarded by the Sheriff, and so deposited by the pursuer, being in every case paid over to the defender, unless the contrary shall be specially ordered by the Court.

Book of Causes to be kept.

VII. And be it enacted, That the sheriff clerk shall keep a book wherein shall be entered all causes conducted under the authority of this Act, setting forth the names and designations of the parties, and whether present or absent at the calling of the cause, the nature and amount of the claim, and date of giving it in, the mode of citation, the several deliverances or interlocutors, and the final decree, with the date thereof; which book shall be signed each court-day by the Sheriff, and the said entries by the clerk shall be according to the form in schedule (B.) annexed to this Act, or with such additions as the sheriff shall appoint; and the decree, stating the amount of expences found due to either party, and containing warrant for arresting or poinding the effects of the party, or committing him to prison, shall be by the clerk annexed to the complaint, and on the same paper with it, the said decree and warrant so annexed, being conformable to schedule (A.) annexed to the present Act; which decree and warrant so written out, being signed by the clerk, shall be a sufficient authority for execution, six free days from the date of the decree, if the party against whom it shall have been given was personally present when it was pronounced; but if he was not so present, execution shall only proceed after a charge of six free days, by delivering a copy of the decree to the party personally, or at his dwelling-place.

Sums found due may be paid by Instalments.

VIII. And be it enacted, That the sheriff may, if he thinks proper, direct the sum or sums found due to be paid by instalments, weekly or monthly, according to the circumstances of the party found liable, and under such conditions or qualifications as he shall think fit to annex.

No Decree subject to stay of Execution, except only in Cases of Action of Reduction before Court of Session, on the Ground of Malice on the part of Sheriff.

IX. And be it enacted, That no decree given by any Sheriff, according to the forms and regulations of this Act, shall be subject to advocation suspension or appeal, or any other form of review, or stay of execution, other than herein-before provided; excepting only an action of reduction before the Court of Session, on the ground of corruption, or malice and oppression on the part of the Sheriff; nor shall any such action of reduction be at all competent after expiration of one year from the date of the decree of the Sheriff; and in all such actions of reduction, the pursuer shall, before the summons is called, find sufficient caution in the hands of the clerk of the process in the Court of Session, for the payment of the sum and expences, if any, for which decree has been given against him by the Sheriff, and for the payment of such expences as may be awarded against him in the action of reduction.

Fees to be taken.

X. And be it enacted, That the following fees and no other shall be allowed to be taken by the clerk and officers of court, for matters done under the authority of this Act.

CLERK'S FEES.

Complaint and Warrant to cite	One Shilling.
Copy for Service	Sixpence.
Entering into Procedure Book	Sixpence.
For Defender's Appearance	Sixpence.
For every Oath	Sixpence.
Decree and Warrant of Execution	Sixpence.
Warrant *de novo*	Four-pence.
Re-hearing	One Shilling and Sixpence.

OFFICER'S FEES, including ASSISTANTS.

Citation and Execution -	Sixpence.
Execution of Arrestment -	Sixpence.
Ditto of Poinding - -	Three Shillings.
Sale - - - -	Two Shillings and Sixpence.
Officer's Travelling Expences, *per* Mile - - -	Four-pence.
Assistants, each, *per* Mile -	Three-pence.

CRIER'S FEE.

For calling - - - One Penny.

A copy of which Table of Fees, signed by the clerk, shall be hung up in every court place, and in his office; and the said fees shall be subject to modification in causes of very small amount, or where the complaint is directed against two or more defenders.

Members of College of Justice not exempt under this Act.

XI. And be it enacted, That no person shall be exempt from the jurisdiction of the Sheriff in any cause carried on in a summary way under this Act, on account of privilege as being a member of the College of Justice.

Sheriff to ordain Expences to be taxed.

XII. And be it enacted, that in all civil causes wherein the debt or demand shall not exceed the value of five pounds, exclusive of expences and fees of extract, which shall in future be brought or carried on before any Sheriff's Court, not according to the summary form herein provided, it shall be lawful for any Sheriff, notwithstanding, and he is hereby authorized and required to ordain the expences (unless he shall see cause to the contrary) to be taxed and regulated according to the rates above mentioned.

Construction of Terms used in this and other Acts.

XIII. And be it enacted, that in all cases in this or any Act of Parliament passed or to be passed affecting *Scotland*, where the term sheriff or sheriff clerk, or sheriffdom or county, shall be used, the same shall be deemed and taken to apply to any stewart or stewart clerk, or stewartry in *Scotland*.

SCHEDULE (A.)

Unto the Honorable the Sheriff for the shire of

Complains, That is owing the complainer the sum (*here insert origin of debt or ground of action*) which refuses to pay unless compelled: therefore the said defender ought and should be decerned and ordained to make payment to the complainer of the aforesaid sum of with expences.

At the day of the sheriff clerk for the shire of grants warrant for summoning the said defender to compear before the Sheriff for the said shire at , in the court-house thereof, upon the day of at of the clock, to answer at the instance of the said complainer; and appoints a copy of the account pursued for, document of debt, or state of the demand, to be delivered to the defender along with the citation; also grants warrant for citing witnesses and havers for both parties to compear at the same place and date, to give evidence in the said matter. *J. P.* Sheriff Clerk.

Upon day of one thousand eight hundred and I officer of court, summoned the above designed to compear before the said Sheriff, time and place above mentioned, to answer at the instance of the complainer, with certification that will otherwise be held as confessing the debt. This I did by full copy of the before complaint and warrant, with a short copy of citation thereto

No. XXVIII. 7 Geo. IV. c. 36.

subjoined, as also a copy of the names and designations of witnesses and havers, and a statement of other means of proof *(as the case may be)*.

A. B. Officer.

At the day of one thousand eight hundred and years, the which day the Sheriff for the county of found and hereby finds the within designed defender, liable to the also within designed pursuer, in the sum of with of expenses, d ecerned and ordained, and hereby decerns and ordains instant execution by arrestment, and also execution to pass hereon by poinding and imprisonment after free days.

J. P. Sheriff Clerk.

SCHEDULE (B.)

No.	Dates of Complaints.	Pursuers.	Defenders.	Sums.	How due.	How cited.	By what Officer.	Interlocutors and Decrees.

N. B. After the name of each pursuer and defender, let the letter *P.* or *A.* be added, in order to mark whether the party was *present* or *absent* when the cause was called; let expences be also entered under the head of interlocutors.

[No. XXVIII.] 7 George IV. c. 36.—An Act to regulate the Service of the Process of the several Courts for the Recovery of Small Debts by Civil Bill in *Ireland*.—[5th *May* 1826.]

36 G. III. (I.)

WHEREAS it is expedient to make regulations for the service of process issued on civil bills under and by virtue of an Act made in the Parliament of *Ireland* in the thirty-sixth year of the reign of His late Majesty King *George* the Third, for the better and more convenient administration of justice, and for the recovery of small debts in a summary way at the sessions of the peace in the several counties in *Ireland*, and of the several Acts in force in *Ireland* for the amending of the said Act; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That at the several sessions of the peace in and for the several counties in *Ireland* which shall be holden in the month of *October* next after the passing of this Act, each and every of the assistant barristers appointed, under the authority of the said recited Act (or of any Act for amending the same), to be assistants to the Justices at every such sessions, shall, by warrant or warrants under the hand and seal of each such assistant barrister respectively, nominate and appoint such number of fit and proper persons, being householders, residing in the principal market towns within the said counties, to be officers for the service of civil bill processes within such county or division thereof as shall be specified and set forth in any such warrant respectively; and it shall be lawful for each and every such officer so nominated and appointed, and he and they is and are hereby authorized and required, to serve such

Assistant Barristers to appoint Officers to serve civil Bill Processes in the several Counties.

process accordingly, within such county or division thereof as aforesaid; and from and after the appointment of any such officers respectively, it shall not be lawful for any person whomsoever, other than one of such officers as shall be appointed and authorized under the authority and according to the directions of this Act, to serve any such process; and that any service or pretended service of any process by any person or persons not appointed and authorized under this Act, shall be wholly null and void to all intents and purposes whatsoever, any Act or Acts of Parliament, or any law usage or custom to the contrary in anywise notwithstanding.

After such Appointments no other Persons shall serve any such Process.

Service by unauthorized Persons declared void.

II. And be it further enacted, That the names and places of abode of each and every officer who shall be appointed by any such assistant barrister to serve such process as aforesaid, shall be from time to time published in some one or more public newspaper or newspapers circulated in the county, and shall be otherwise promulgated and made known in such manner and at such times as to such assistant barrister shall seem fitting and expedient.

Names and Places of abode of Officers shall be published in county Newspapers.

III. And be it further enacted, That every officer who shall be appointed by any assistant barrister for the serving of process shall be entitled to and shall receive a salary of ten pounds a year, to be paid quarterly, upon a certificate signed by such assistant barrister, specifying the amount of such payment, and stating that such officer has duly performed the duty of his office to the satisfaction of the magistrates and of such assistant barrister during the preceding quarter, or during such period thereof as such person shall have so served; and upon the production of such certificate to the collector of excise for any district within which the sessions shall be holden, or within which such officer shall reside, it shall be lawful for such collector of excise to pay to such officer the amount of the payment mentioned in such certificate; and all monies so paid shall be allowed to the collector of excise in his account, upon production of such certificate, endorsed by the officer to whom such money shall be payable.

Annual Salary to officers to be paid by Collector of Excise, on Certificate of Assistant Barrister.

IV. And be it further enacted, That it shall be lawful for any officer who shall be appointed by such assistant barrister for the serving of process, in addition to the salary made payable under this Act, to receive a fee of sixpence for the service of every process which he shall be required to serve; and which said sum of sixpence shall be paid to such officer on the delivery of such process to him for the purpose of being served by him.

Officers may receive certain Fees in addition to their Salaries, for Service of Process.

V. And be it further enacted, That each and every officer who shall be appointed under the authority of this Act for the service of process shall be removable, and shall and may be removed, at the will and pleasure of the assistant barrister of the county for the time being, and that any other person or persons may be appointed by such assistant barrister, or with his consent, in manner directed by this Act, in the room of any officer so removed; and the names of each and every person so removed, as also the names and places of abode of each and every person appointed in the room and stead of any officer so removed, shall be published in like manner as by this Act is required with respect to the original appointment of any such officer respectively.

Officers may be removed, and others appointed, whose Names shall be published.

VI. And be it further enacted, That a book or books shall be kept by every officer who shall be appointed under this Act for the service of process, in such form as shall be directed or approved by the assistant barrister, in which shall be entered the names of the plaintiff and defendant by or against whom any process shall be issued, the cause of action, the nature of such process, the day on which such process shall be received to be served, the day on which such process shall be served or executed, the place where, and the name and description of the person on or with whom such process shall be served or left; and in case any such process shall not have been duly served or left, then the cause of such service not having taken place shall be stated; and each and every officer so appointed by any assistant barrister for the service of such process shall

Book to be kept by Officers for entering Particulars of Service of Process.

No. XXIX. 7 Geo. IV. c. 41.

attend, and produce such book to the assistant barrister, at each and every sessions of the peace, or shall cause such book to be produced to such barrister, in case the personal attendance of such officer shall be dispensed with by such barrister, upon a sufficient excuse for non-attendance.

[No. XXIX.] 7 George IV. c. 41.—An Act to amend the Laws for the Recovery of Small Debts, and the Proceedings for that Purpose, in the Manor Courts in *Ireland*.—[26th *May* 1826.]

WHEREAS an Act was passed in the Parliament of *Ireland*, in the Twenty-fifth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for the more speedy and easy Recovery of Small Debts in the Manor Courts within this Kingdom, and for regulating the Costs of Proceedings for that Purpose therein*; and whereas an Act was passed in the Parliament of *Ireland*, in the twenty-seventh year of His said late Majesty's reign, to render more effectual the said recited Act of the twenty-fifth year aforesaid; and it is expedient that the provisions of the said Acts should be amended, and the benefit thereof extended; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said recited Acts, or either of them, as excepts the manor courts in the county of *Dublin*, or in the county of the city of *Dublin*, from the operation of the said Acts or either of them, shall be and is hereby repealed; and that from and after the passing of this Act the said recited Acts, and all the provisions therein contained, as the same are amended or enlarged by this Act, shall extend and apply, and shall be construed to extend and shall be applied, to all manor courts within *Ireland*, and to the recovery of all sums of money to the amount mentioned in the said recited Act of the twenty-fifth year of his late Majesty, and to any amount whatever within the sums to which the jurisdiction of such manor courts may be respectively limited, by the grants or charters or other authority under which the said respective courts may be held, where the cause of action shall arise within the jurisdiction of such courts respectively, although such sums shall exceed the several sums in the cases respectively mentioned in the said recited Act.

25 G. III. (I.)

27 G. III. (I.)

So much of recited Acts as excepts the Manor Courts of Dublin County and City from their operation, repealed; and the Acts extended to all Manor Courts in Ireland, to the Amount of their several Jurisdictions.

II. And be it further enacted, That it shall and may be lawful for any person or persons who shall think himself or themselves aggrieved by any decree of any seneschal or steward of any manor court within the county or county of the city of *Dublin*, to appeal from such decree to the Chief Justice of His Majesty's Courts of King's Bench or Common Pleas, or to the Chief Baron of His Majesty's Court of Exchequer in *Ireland*, or to any other Justice of *Nisi Prius* in the said Courts, at their respective sittings at *Nisi Prius* for the city of *Dublin*, after the *Easter* or *Michaelmas* Term next following the pronouncing of such decree, in the same manner as any parties aggrieved are empowered and directed to do in any cases of civil bills; and the said Chief Justices and Chief Baron, or other Justices of *Nisi Prius* for the said city, are hereby empowered and required at the said sittings, which for this purpose they may hold in their respective courts, or in any other convenient place in the said city or liberties thereof, and may continue by adjournments as to them shall seem expedient, to hear and determine the said appeals, in the same manner as they are empowered and directed to do in any cases of civil bills, and to issue a decree and execution thereon in like manner as decrees and executions may be awarded and issued by the next going Judges of Assize, under the said recited Act of the Twenty-fifth year of King *George* the Second; and every such seneschal or steward is hereby required to stop further proceedings on every such decree, in like manner and upon the like conditions as by the said recited Act is

Appeal from Decrees of Manor Courts in Dublin, may be made to Judges at Nisi Prius for Dublin, after Easter and Michaelmas Terms.

directed and prescribed in any cases of appeal to the next going Judge of Assize.

No. XXIX. 7 Geo. IV. c. 41.

III. And be it further enacted, That in all cases where any complaint or application shall be made to the seneschal or steward of any manor court, such steward or seneschal shall and he is hereby authorized empowered and required to issue, or cause to be issued, a summons or process, in the name of such seneschal or steward, to the person or persons complained against, requiring such person or persons to appear at the next court to be holden by such seneschal or steward within such manor, on any day not less than seven days next after the date of such summons, and expressing the names of the parties plaintiffs and defendants, the cause of action, and the day and place of appearance; and every such summons shall be served upon the person or persons complained against on some day not less than three days before the day appointed for the appearance of such person or persons, by the delivery of such summons to such person or persons, or by leaving such summons at the usual place of abode of such person or persons; and in case such summons shall not be served or left as aforesaid on some day not less than three days before such days of appearance, the same shall be and become null and void to all intents and purposes whatsoever.

Manner of issuing and serving Summons, &c. to attend Manor Courts.

IV. And be it further enacted, That the goods or chattels of any defendant which shall or may be seized or taken under any attachment issuing out of any manor court in *Ireland*, shall not be sold or exposed to sale, but shall remain in custody of the marshal or other officer, until after the court day next succeeding the court day at which any defendant to whom such goods or chattels shall belong, shall have been summoned to appear as aforesaid; and that the goods and chattels of any defendant shall not be sold under any attachment in any case where the defendant shall appear, according to the exigency of such summons, and shall put in sufficient bail for his future appearance, and for abiding the decision of the court on the matter in question.

Goods seized under Attachment shall not be sold before ensuing Court Day, nor if Bail be put in by Defendant.

V. And be it further enacted, That whenever the sum sued for, or for which a verdict or decree shall be made or given in any manor court, shall not exceed the sum of forty shillings, it shall be lawful for the seneschal or steward of such court to withhold any costs or any part thereof from the plaintiff in such action, and not to issue any execution on the verdict for the costs allowed by the said recited Act of the twenty-fifth year of King *George* the Second, or to issue execution only for such part or proportion of such costs as to such seneschal or steward shall seem fitting and convenient, according to the circumstances of the case; and that in all such cases when the sum sued for, or for which a verdict or decree shall be made or given, shall not exceed the amount aforesaid, it shall and may be lawful for any seneschal or steward of such court, being a barrister of at least three years' standing, to stay the issuing of the decree for any space of time not more than three calendar months, provided the defendant shall undertake to pay the amount of the sums so decreed, with the costs, by such weekly or monthly instalments, or in such proportions as the said seneschal or steward, upon a careful inquiry and examination into the circumstances of the defendant and his ability to pay, shall direct; and the said decree shall be stayed accordingly, until default be made by the defendant, in the payment of some one instalment, and shall then only issue for the balance due on the foot of such decree, with such costs as the said seneschal or steward may think fitting.

Where sum sued for or recovered does not exceed 40*s*. Costs may be withholden;

and Seneschal may stay the issuing of the Decree for three months, if the Defendant will undertake to pay the Amount by Instalments.

VI. And be it further enacted, That every seneschal or steward of any manor in *Ireland*, not being a barrister of at least three years' standing, who shall hold such office of seneschal or steward at the time of the passing of this Act, shall before the expiration of six calendar months next after the passing of this Act, and every seneschal or steward of any manor in *Ireland*, who shall be appointed at any time after the passing of this Act, not being such barrister as aforesaid, shall within three calendar months next after any such appointment shall take place, respectively enter into and give security by recognizance, with two good

Seneschals shall enter into Recognizances for Performance of their Duty, and to answer for Damages for misconduct.

No. XXX. 7 Geo. IV. c. 61.

and sufficient sureties, before the Justices of the Peace and assistant barrister, at some Quarter Session or General Session of the Peace, or some adjournment thereof, in the county, county of a city or town in which the manor shall be situate, or before the Judges or Justices of Oyer and Terminer and General Gaol Delivery, to be holden in and for such county, county of a city, or county of a town, or before the Chairman of the Sessions of the Peace for the county of *Dublin*, where any such manor shall be situate in the county of *Dublin*, or before the Recorder of the city of *Dublin*, where any such manor shall be situate within the county of the city of *Dublin*, in such sum and sums respectively as to such assistant barrister, or Justices of Oyer and Terminer, or Chairman of the Sessions of the county of *Dublin*, or Recorder of *Dublin*, shall think sufficient, conditioned for the true and faithful performance of the duties of the office of such seneschal or steward, and to pay and satisfy any damages which may be given against him in any action for neglect or misconduct, or breach of duty in his office; and if any such seneschal or steward of any manor, not being such barrister as aforesaid, shall omit or neglect to enter into such recognizance as aforesaid, within the times aforesaid, he shall forfeit the sum of five hundred pounds to His Majesty, his heirs, and successors, to be recovered by action of debt in any of His Majesty's Courts of Record in *Dublin*, in which no essoign protection or wager of law, nor more than one imparlance shall be allowed.

Penalty.

[No. XXX.] 7th George IV. c. 61.—An Act for the more effectual Administration of Justice in Cities, Towns Corporate, and other local Jurisdictions in *Ireland*.—[26th *May*, 1826.]

WHEREAS the number of Justices of the Peace, who are empowered to act within several of the counties of cities, counties of towns, and separate and local jurisdictions other than counties at large in *Ireland*, is in some cases extremely limited, and the only persons so empowered to act are in many cases, from age and infirmity, incapacitated for active performance of duty: And whereas it would lead to the more effectual administration of the law, and to the prevention of crime, if the number of Justices of the Peace were in such cases to be increased: Now be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in every case in which it shall be made appear to the Lord Lieutenant, Lords Justices, or other chief governor or governors, and Privy Council of *Ireland*, that the number of Justices authorized to act within such local jurisdiction respectively, is insufficient for the due administration of the law, and for the holding Petty Sessions therein, it shall be lawful for the Lord Lieutenant, Lords Justices, or other chief governor or governors of *Ireland*, with the advice and assent of the Privy Council, to order and direct that one or more additional Justices shall be appointed within such local jurisdiction, as the circumstances of the case may appear to them to require; and thereupon the Lord Chancellor, Lords Commissioners, or other Keeper or Keepers of the Great Seal of that part of the United Kingdom of *Great Britain* and *Ireland*, called *Ireland* for the time being, and he and they are hereby empowered, by Commission under the Great Seal, to appoint such person or persons as he or they shall think fit, not being more in number than those specified in such order of the Lord Lieutenant, Lords Justices, or other chief governor or governors, and council as aforesaid, to be Justices of the Peace and Quorum during His Majesty's pleasure, in and throughout the said local jurisdictions respectively; which persons so appointed shall and may have the same power and authority to act and to officiate to all intents and purposes, and to execute the duties of Justices of the Peace and Quorum, within the said local jurisdictions respectively, by virtue of such commission or commissions, as any other Justices of the Peace, by charter or otherwise, are or shall be authorized

Lord Lieutenant, &c. may appoint additionel Justices of the Peace in local Jurisdictions.

appointed or empowered to act or officiate within the said local jurisdictions respectively.

II. Provided always, That such Justices of the Peace and Quorum so appointed shall not, by reason of such appointment, possess or exercise any power or authority within the corporation of the said local jurisdictions respectively, or acquire thereby any corporate rank power and authority, of what kind or nature soever; provided also, that no Justices shall be appointed under this Act in any city in which a Police Court shall have been established under an Act of Parliament.

Such Justices not to acquire corporate Rank Power or Authority.

[XXXI.] 7th & 8th George IV. c. 59.—An Act for further amending the Laws for the Recovery of small Debts, and the proceedings for that purpose in the Manor Courts in *Ireland*.—[2d *July* 1827.]

WHEREAS an Act was made in the last Session of Parliament, intituled *An Act to amend the Laws for the Recovery of Small Debts, and the Proceedings for that purpose in the Manor Courts of* Ireland; and it is expedient that the said Act should be amended and rendered more effectual: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases where the sum sought to be recovered under the said Act shall exceed ten pounds, and shall not exceed the sum of one hundred pounds, the summons or process which shall be issued in the name of the steward or seneschal of the manor court, to the person or persons complained against, shall be served upon such person or persons upon some day not less than seven days before the day appointed for the appearance of such person or persons; and that in all cases where the sum sought to be recovered shall exceed one hundred pounds, every such summons or process shall be served upon the person or persons complained against, upon some day not less than fourteen days before the day appointed for the appearance of such person or persons; and that in either of such cases any person or persons so complained against, shall and may be required by such summons to appear at any court to be holden by such seneschal or steward within such manor on any such day, to be named in such summons, as shall be at a sufficient distance from the date of such summons as to allow for such service; and every such summons shall be served by the deliverer of such summons to the person or persons summoned, or by leaving such summons at the usual place of abode of such person or persons; and if any such summons shall not in the several cases be served according to the directions of this Act, the same shall be and become null and void to all intents and purposes.

7 George IV. c. 41.

Where the Debt exceeds 10*l.* but does not exceed 100*l.* the Summons shall be served Seven Days before the Day of Appearance, and Fourteen Days if the Debt exceeds 100*l.*

Appearance.

Service of Summons.

II. And be it further enacted, That in all cases where the sum sued for, or for which a verdict shall be given in any manor court, shall not exceed the sum of forty shillings, it shall and may be lawful for the court and jury to examine the plaintiff and defendant, or either of them, upon oath, if they shall think proper so to do; and it shall also be lawful for the jury in and by their verdict to direct that payment of the sum for which their verdict shall be given shall be made by the defendant with or without the costs, by such weekly or monthly instalments, or in such proportions, and within such time, not exceeding three calendar months, as such jury shall think fitting and convenient; and in such cases it shall be lawful for the seneschal or steward of any such court to stay the issuing of the decree for any space of time not more than three calendar months, provided the defendant shall undertake to pay the amount of the sum for which such verdict shall be given, with the costs (if any), by such instalments or in such proportions as shall be directed by the verdict of such jury; and such decree shall be stayed accordingly, until default be made by the defendant in the payment of some one instalment, and shall then only issue for the balance due, with such costs as such seneschal or steward shall think fitting.

Where Sum recovered shall not exceed 40*s.* Jury may examine the Parties, and apportion the Payment by Instalments.

No. XXXI. 7 & 8 G. IV. c. 59.

Execution may be issued on Verdict, returnable on any Court Day, and may be renewed if requisite.

III. And whereas by an Act made in the Parliament of *Ireland*, in the twenty-fifth year of the reign of His late Majesty King *George* the Third, for the more speedy and easy recovery of small debts in the manor courts in *Ireland*, it is among other things enacted, that the seneschal or steward of any such court shall issue execution on verdicts and decrees in such courts returnable on the next court day; and that no renewal of any execution shall be granted in any case where an execution shall be obtained, and not executed, unless it shall first appear to such seneschal or steward, on oath, that the party applying for such renewal had really and truly used legal and necessary diligence in order to have such former execution executed: Be it enacted, That from and after the passing of this Act it shall be lawful for the seneschal or steward of any such court to issue execution on any verdict or decree, returnable at any court day after the verdict or decree given or made; and also to issue or grant any renewal of any execution, in any case where such renewal shall appear to such seneschal or steward to be requisite for obtaining justice to the party on whose behalf such renewal shall be applied for.

Trial may be deferred.

IV. And be it further enacted, That it shall and may be lawful for the seneschal or steward of any manor court, upon application of either of the parties in any action, to postpone or defer the trial of the cause until the next or any subsequent court day after such application shall be made, if he shall think fit in his discretion so to do; and that in all cases where the sum sued for shall exceed ten pounds the trial shall not take place until the court day next after the court day appointed for the appearance of the defendant upon the original summons in such action.

Trials in Cases above 10*l.*

Fees to Registrar on Summons;

V. And be it further enacted, That from and after the passing of this Act the several fees and sums following shall and may be paid by and taken from any person suing or being sued in any manor court in *Ireland* having jurisdiction to hold places to the amount of thirty pounds or upwards, in addition to the fees specified in the said recited Act of the twenty-fifth year of His late Majesty; that is to say, to the registrar of any manor court, where such officer is created by the charter of such manors respectively, on the taking out of any summons, where the sum in demand shall not exceed ten pounds, the sum of one shilling; where such sum shall exceed ten pounds and shall not exceed one hundred pounds, the sum of two shillings; and where such sum shall exceed one hundred pounds, the sum of three shillings, and no more. To the seneschal or steward of any manor court, upon the making of any decree, where the sum recovered shall not exceed ten pounds, the sum of two shillings; where such sum shall exceed ten pounds and shall not exceed one hundred pounds, the sum of three shillings; and where such sum shall exceed one hundred pounds, the sum of four shillings, and no more.

and to Steward on Decree.

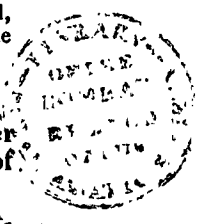
Manor Courts having unlimited Jurisdiction as to Debts, may proceed in Cases exceeding 10*l.* as under their ancient Jurisdiction.

VI. Provided always, and be it further enacted, That in cases where the jurisdiction of any manor court or courts, with respect to the recovery of any sum or sums of money, shall not be limited to any specific amount by the grants or charters or other authority under which any such court or courts may be respectively held, it shall and may be lawful for such court or courts, and for the seneschal steward and registrar of any such court or courts, to proceed for the recovery of any sum or sums of money exceeding ten pounds, in such manner and method, and by such process, as such court, or the seneschal or steward or registrar and other officers of such court, might have done at any time before the passing of the said recited Act of the last Session of Parliament; and in such case it shall be lawful for the seneschal or steward and for the registrar of such court to receive and take such fees as were lawfully payable under such grants or charters, or otherwise, at any time before the passing of the said Act; any thing in the said Act to the contrary in anywise notwithstanding.

Weekly Payments, not exceeding 2*s.* 6*d.*, to be paid to Debtors in Custody for less than 10*l.*

VII. And be it further enacted, That in all cases where any person shall be confined or detained in any prison at the suit of any creditor or creditors in any manor court for any debt less than the sum of ten pounds, it shall be lawful for the seneschal or steward of such court, on the application of such debtor, in case such seneschal or steward shall

think right under the circumstances of the case so to do, to order that the creditor or creditors at whose suit such debtor shall be confined or imprisoned shall pay to such debtor such sum or sums, not exceeding the rate of two shillings and sixpence by the week in the whole, at such times and in such manner as such seneschal or steward shall direct; and that on failure of payment thereof, as directed by such seneschal or steward, such debtor shall be forthwith discharged from custody at the suit of the creditor or creditors failing to pay the same.



[No. XXXII.] 9 George IV. c. 43.—An Act for the better Regulation of Divisions in the several Counties of *England* and *Wales*.—[15th *July* 1828.]

WHEREAS by divers Acts now in force it is enacted, that certain matters and things, in the same respectively mentioned, shall be transacted and determined within the divisions or limits within which the same shall arise, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one two or more justices of the peace dwelling within or near to, or usually acting within, such divisions or limits respectively: And whereas the boundaries of such divisions or limits are in some instances uncertain, and in many have become inconvenient to the inhabitants within the same, from the change or increase of trade or population, or from other causes: And whereas doubts have arisen as to the authority by which such divisions or limits may from time to time be constituted defined or altered; and it is expedient that such doubts should be removed, and due provision made for the constituting defining and regulating from time to time such divisions or limits, as the convenience of the inhabitants within the same may require; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that at any time or times after the *Michaelmas* quarter sessions next following the passing of this Act, it shall be lawful for any two or more justices of the peace for any county riding, or division in *England* or *Wales*, having a separate commission of the peace, to transmit to the clerk of the peace a statement in writing, signed by such justices, of the parishes, tithings, townships, and places within the same, which, in the opinion of such justices, would form together a convenient and a proper division within and for which special sessions should thenceforward be held; or of any parishes, tithings, townships, or places, which, in the opinion of such justices, ought to be annexed, for the same purposes, to any other division in the said county than those or that of which at the time of making such statement they form part; and that every such statement shall, among other things, set forth within what existing divisions or division, limits or limit, the several parishes, tithings, townships and places enumerated in the same, are situated or deemed to be; and also whether one or more and what existing divisions or limits will be altered by such proposed new divisions, or by the change of any place or places from one division to another; and also the names of such justices of the peace as at the date of such statement are usually resident or acting as such within the boundaries of such proposed new division.

Justices to forward to the Clerk of the Peace a Statement of the Townships, Places, &c. that would form a proper Division for which Special Sessions should be held.

II. And be it further enacted, That at the quarter sessions next following the receipt of every such statement, setting forth such particulars as are above enumerated, and not otherwise, the clerk of the peace shall and he is hereby required to lay the same before such justices of the peace in such sessions assembled; and the justices of the peace for such county riding or division, having such separate commission of the peace, shall and they are hereby required (except in the cases herein-after provided for) to proceed, at the quarter sessions next following the laying of such statement before them as aforesaid, to the consideration thereof, and at their discretion to adopt the same wholly or in part, or to reject the same

Statement to be laid before the Justices at the next Quarter Sessions, who are to adopt or reject the same.

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altogether, or to adjourn their determination thereupon to the next or any succeeding quarter sessions.

Clerk of the Peace to advertise Statement and other Particulars in the Newspapers.

III. And be it further enacted, That immediately after the quarter sessions at which such statement shall have been first laid before the justices of the peace, the clerk of the peace shall cause to be published a copy of such statement in three successive numbers of one or more weekly newspapers usually published or circulated within the same county riding or division, and in which the advertisements of county business are usually inserted; and at the foot of such copy shall also cause notice to be given that such statement has been laid before such justices in pursuance of the directions of this Act, and that the same will be taken into consideration by the court at the then next ensuing quarter sessions.

If Justices approve, an Order to be made for constituting a new Division, and the Clerk of the Peace to publish the same.

IV. And be it further enacted, That when and so often as the justices of the peace of any such county riding or division, having a separate commission of the peace, shall adopt wholly or in part any such statement so laid before them, and shall determine to change any parish, tithing, township, or place, from one division to another, or to constitute any new division, within which special sessions shall thenceforward be holden, the said justices of the peace shall thereupon make an order for such alteration, or for the constituting and defining such new division, and in such last-mentioned order shall particularly enumerate the several parishes, tithings, townships, and places to be comprised within such new division, and shall also specify the division or divisions within which respectively any parishes, tithings, townships, and places, disannexed by such order from any former division, and not forming part of such new division, shall thenceforward be taken to be, and also shall affix to such new division the name of some principal and convenient parish township or place within the same, and also shall, in either of such orders, as the case may be, particularly set down the day from which such order shall take effect; and the clerk of the peace for such county riding or division, shall forthwith publish a copy of such order in three successive numbers of one or more such weekly newspapers as aforesaid, and shall transmit a copy of such order to every high constable within the limits of such new or altered division or divisions.

No new Division to be constituted unless Five Justices at least shall be proved to be resident therein.

V. Provided always, and be it further enacted, That nothing in this Act shall be taken to authorize, and that it shall not be lawful for any justices in any court of quarter sessions to make any order constituting such new division, unless upon due proof before them made in open court upon oath that for two years next before the making of such proof there have been, and at the time of making the same there are, at the least, five justices of the peace residing in or usually acting within the boundary line proposed to be the limits of any such new division.

New Divisions to be deemed lawful Divisions for holding Special or Petty Sessions, or other Meetings of Justices.

VI. And be it further enacted, That from and after the day so specified in such order, for the term of twenty-one years, and until further order of sessions after the expiration of that time, and subject to no alteration or revision during such term, except as herein-after provided, all matters and things which by law are now or hereafter may be required to be, or which now are usually transacted or determined within the division within which the same shall have arisen, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one two or more justices of the peace dwelling or usually acting within the same, shall be transacted and determined, so far as the same matters and things arise within or concern the inhabitants of such new or altered division, or any of them, or the persons exercising their trade or calling therein, within the boundaries of such new or altered division; and such new or altered division shall thenceforward be, and be reputed and taken to be, for all purposes, and in the construction of all statutes now in force or hereafter to be made, and containing no special provision to the contrary, a lawful division for the holding of special sessions; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby thenceforward required to give their at-

tendance to and upon such justices of the peace at any time assembled in such special sessions, within the same division, as fully and effectually as by law they had been bound to do within any division reputed or taken before the passing of this Act to be a lawful and accustomed division of justices for the purposes aforesaid.

Justices at Sessions to cause Inquiry into the Extent of Divisions, and alter the same, and affix Names thereto.

VII. Provided always, and be it further enacted, That at the quarter sessions next after the laying of any such statement before the justices in such sessions assembled, it shall and may be lawful for such justices, if they shall deem it expedient and proper, not to proceed to the single consideration of such statement, but instead thereof to cause to be made an inquiry and examination into the boundary lines extent and other local circumstances of all the existing and accustomed divisions for the holding of special sessions within the commission of such justices; and at such or any succeeding quarter sessions, to which the conclusion of such inquiry and examination may from time to time be adjourned, by order of sessions, to regulate, alter, new model, and subdivide all or any of such divisions, in such manner as shall appear to them proper and convenient, particularly specifying in such order the names of all such divisions, whether newly constituted altered or unaltered, the several parishes, tithings, townships, and places to be comprised in each, and affixing or continuing to each the name of some principal and convenient parish township or place within the same.

Clerk of the Peace to publish a Copy of such Order.

VIII. And be it further enacted, That the clerk of the peace for any county riding or division in which such order shall have been made as last aforesaid, shall forthwith publish a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also forthwith transmit, by the post, a copy of the same to the churchwardens and overseers of the poor of each parish within the said county riding or division, to be by them affixed on the principal door of the church of such parish; and at the foot of every such copy so published or transmitted shall add a notice specifying at what time such order will be enrolled as herein-after provided, and at what time and in what manner any person or persons, or body corporate, aggrieved by such order, may petition against the same, or any part thereof, as herein-after provided.

Order to specify a Time when it shall be enrolled.

IX. And be it further enacted, That in every such order, some time not earlier than the fourth quarter sessions next after the making thereof, shall be provisionally specified, on which the same shall be enrolled as herein-after provided, subject to such alteration as may thereafter be made either in the particulars of the said order, or in the time of its enrolment; and that at any court of quarter sessions preceding such time, it shall and may be lawful for any one or more person or persons, or body corporate, jointly or severally, to present a petition in writing to such court against all or any part of such order, and to produce witnesses in support of such petition; and the justices at such court assembled shall and they are hereby required to hear and determine, in a summary way, the merits of such petition, and to amend such order so far as may, upon such hearing, appear proper and convenient: Provided always, that no such petition shall be received or examined into, unless after due proof that a notice in writing, specifying the grounds thereof, which upon the hearing shall alone be inquired into, hath been served ten clear days before the commencement of such sessions, upon one of the overseers of the poor, or the tithingman or constable, or two substantial housekeepers of the parish, tithing, township or place respectively, as the case may be, wherein such petitioner or petitioners shall be resident at the time of presenting such petition, and also lodged, twenty clear days before such commencement, at the office of the clerk of the peace, who shall and he is hereby required forthwith to transmit a copy thereof to each of the justices usually acting within or for the district or places or place named in such notice.

Parties allowed to petition against such Order.

Order to be enrolled as soon as Petitions against the same have been determined, and shall not be subject to Alteration for Ten Years.

X. And be it further enacted, That so soon as all such petitions against

No. XXXIII. 10 Geo. IV. c. 46.

such order shall have been determined, and such amendments made therein as shall have appeared necessary or proper, the justices at such quarter sessions shall cause to be inserted therein some day not earlier than one month after such sessions from which the same shall take effect, and shall cause the same order to be enrolled, and the same shall remain an order of sessions, controlling any order or orders of sessions heretofore made for the separate constitution of any new divisions, or the partial alteration of any accustomed divisions, under the former provisions of this Act, and not subject itself to revocation or alteration of any kind for the space of ten years thence next ensuing; and during such ten years no such statement shall be received or proceedings had thereon as above mentioned, but during all that time, and until further order of sessions after the expiration of that time, the several divisions, as limited modelled or constituted in and by such order, shall be and be taken to be, for all the purposes in this Act mentioned, the lawful divisions of such county riding or division, having such separate commission of the peace, for the meetings of justices in special sessions, under any statute now in force, or hereafter to be made, and containing no special provision to the contrary; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby required thenceforward, during the time last above limited, to give their attendance to and upon the justices of the peace at any time assembled in such special sessions, within the same divisions respectively, as fully and effectually as by law they have been bound to do within any division reputed and taken before the passing of this Act to be a lawful and accustomed division for the meetings of justices for any of the purposes aforesaid.

Clerk of Peace to publish Copy of Enrolment.

XI. And be it further enacted, That immediately after the enrolment of such order, the clerk of the peace shall and he is hereby required to cause to be published a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also transmit one copy thereof to each justice of the peace dwelling within or usually acting within and for such county riding or division, having such separate commission of the peace.

Proceedings not to be quashed for Want of Form.

XII. And be it further enacted, That no order to be made, nor any proceeding to be had or taken, in pursuance of this Act, shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatever, into any of his Majesty's Courts of Record at *Westminster;* any law or statute to the contrary notwithstanding.

Not to extend to Middlesex, &c.

XIII. And be it further enacted, That nothing in this Act contained shall extend or be construed or taken to extend to the county of *Middlesex* in *England*, or to *Scotland* or *Ireland*.

[No. XXXIII.] 10 George IV. c. 46.—An Act for more effectually executing an Act of the last Session of Parliament, for the better Regulation of Divisions in the several Counties of *England* and *Wales*.—[19 *June* 1829.]

9 G. 4. c. 43.

WHEREAS by an Act passed in the last session of Parliament, intituled *An Act for the better Regulation of Divisions in the several Counties of* England *and* Wales, the court of quarter sessions is empowered in certain cases to make orders for altering existing divisions, and for constituting new divisions for holding petty sessions, whereby in many cases parts of a hundred, wapentake, ward, or other district in the nature of a hundred, will be severed, for the purposes aforesaid, from the main body thereof, and such hundred or other like district will thereafter be situate in two or more divisions: And whereas by divers Acts it is required of high constables to give notice to, or to serve precepts on, petty constables, churchwardens, overseers of the poor, surveyors of the highways,

and others, similar duties may be cast upon high constables by future Acts, and the labour of executing such duties will be increased by the severance of the hundred or other like district under the provisions of the said recited Act, and difficulties may arise in the due execution of process in such cases: For remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That whensoever the court of quarter sessions shall, under the said provisions, make an order for changing any parish, tithing, township, or place from one division to another, or an order for constituting any new division, and it shall appear to the court that any inconvenience will arise from such change if the high constable or high constables shall continue liable to perform the duties aforesaid in respect to the whole of his or their hundred or other like district, the same court of quarter sessions shall make an order for remedying such inconvenience, either by directing that where there are more than one high constable such duties shall be divided between them, in such manner as to the court shall seem fit, or, if circumstances shall so require, that the high constable or high constables shall be entirely exempted from the performance of a certain portion of those duties, and that the same portion shall be performed by the high constable of any other hundred, or by some petty constable tithingman or other peace officer, or by some other person or persons to be specified in the order; and every such order shall be binding on all justices officers and persons whomsoever.

Court of Quarter Session, on making Order for Division of any District, may at the same Time make Order respecting the Duties of the High Constables.

II. Provided always, That neither this Act, nor any order to be made by virtue thereof, shall prejudice or affect the rights of any lord of any hundred manor or other franchise, nor any person claiming under him, otherwise than as to the service of process in the cases herein-before mentioned or referred to.

Act not to affect the Rights of Lords of Manors.

[No. XXXIV.] 10 George IV. c. 55.—An Act for the more effectual Recovery of Small Debts, and for diminishing the Expences of Litigation in Causes of small Amount, in the Sheriff Courts in *Scotland*.—[19th *June* 1829.]

WHEREAS an Act was made in the sixth year of the reign of his present Majesty, intituled *An Act for the more easy Recovery of Small Debts in the Sheriff Courts in* Scotland, the provisions of which have been found beneficial; but experience has pointed out certain alterations by which its benefits will be extended and rendered more effectual, and it is expedient that such alterations and the former provisions should be consolidated in one Act: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited Act shall be and the same is hereby repealed from and after the first day of *September* next, save and except as to such causes as shall have been commenced under the authority of the said recited Act before the said first day of *September* next, and shall be then depending; all which causes shall be carried to a conclusion, according to the rules prescribed by the said Act, notwithstanding this Act.

6 G. 4. c. 24.

Recited Act repealed after 1st September next, except as to Causes then commenced.

II. And be it enacted, That from and after the first day of *September* next, it shall be lawful for any sheriff in *Scotland*, within his county to hear try and determine in a summary way, as more particularly hereinafter mentioned, all civil causes, and all prosecutions for statutory penalties, that may be competently brought before him, wherein the debt demand or penalty concluded for shall not exceed the value of one hundred pounds *Scots*, exclusive of expences and fees of extract: Provided always, that the pursuer or prosecutor shall in all cases be held to have

Sheriffs may hear and determine Causes for Sums under 100*l.* Scots in a summary Way.

No. XXXIV. 10 Geo. IV. c. 55.

passed from and abandoned any remaining portion of any debt demand or penalty beyond the sum actually concluded for in any such cause or prosecution.

Providing Forms of Proceedings.

III. And be it enacted, That all such causes and prosecutions, which the pursuers or prosecutors thereof shall choose to have heard and determined according to the summary mode hereby provided, shall proceed, except as herein-after provided in regard to forthcomings, upon summons or complaint, agreeably to the form in schedule (A.) subjoined to this Act, stating shortly the origin of debt or ground of action, and concluding against the defender; which summons or complaint, being signed by the sheriff clerk, shall be a sufficient warrant and authority to any sheriff's officer for summoning the defender to appear and answer at the next sheriff court after the date of the citation, not being sooner than upon the sixth day after such citation, and also for summoning such witnesses and havers as either party shall require; and a copy of the said summons or complaint, with the citation annexed, and also a copy of the account, if any, shall be served at the same time by the sheriff's officer on the defender personally, or at his dwelling place, in which last case, if the defender shall not appear, he shall be cited a second time personally, or at his dwelling place, upon the words *de novo* being either subjoined to the original summons, and signed by the sheriff clerk, or written in the procedure book kept by the clerk, and signed by the sheriff, to appear at the next court after the date of the said citation, not being sooner than the sixth day after such citation; and if the defender has been cited for the first time to a diet of court not sooner than twelve free days from the date of the citation, it shall be lawful for the sheriff's officer, in case the defender shall not have been personally found at the first citation, to cite him a second time, either personally or at his dwelling place, to the same diet of court, on the authority of the original warrant, and without previously returning an execution of the first citation, provided that such second citation shall not be given sooner than upon the sixth day after the date of the first citation, nor later than upon the sixth day before the diet of court to which the defender is so cited for the second time; and the officer summoning parties witnesses or havers, shall in all cases under this Act return an execution of citation signed by him, or shall appear and give evidence on oath of such citation having been duly made, and all such citations given by an officer alone without witnesses and executions thereof subscribed by such officer, shall be good and effectual to all intents and purposes.

Arrestment of Goods of Defender.

IV. And be it enacted, That the pursuer of any civil cause may obtain a warrant, signed by the sheriff clerk of the county within which the defender resides, agreeably to the form in schedule (B.) subjoined to this Act, for arrestment, on the dependence of the action, of any money goods or effects to an amount or extent not exceeding the value of one hundred pounds *Scots*, owing or belonging to such defender, in the hands of any third party, and may at any time before decree is pronounced in the cause, provided such time does not exceed sixty days from the date of such warrant, use arrestment thereon against such money goods and effects owing or belonging to such defender, either within the county in which such warrant shall have been issued, or in any other county or counties: Provided always, that before using such warrant in any other county, it shall be presented to and indorsed by the sheriff clerk of such other county, who is hereby required to make such indorsement on payment of the fee herein-after mentioned; and provided also, that any arrestment laid on under the authority of this Act shall, on the expiry of three months from the date thereof, cease and determine without the necessity of a decree or warrant of loosing the same, unless such arrestment shall be renewed by a special warrant or order, duly intimated to the arrestee, in which case it shall subsist and be in force for the like time and under the like conditions as under the original warrant, or unless an action of forthcoming, in manner herein-after provided, shall have been raised before the expiry of the

said period of three months, in which case the arrestment shall subsist and be in force until the termination of such action of forthcoming.

For providing how Arrestments may be loosed.

V. And be it enacted, That when any arrestment shall have been used on the dependence of any action, it shall be competent to the defender to have such arrestment loosed, on lodging with the sheriff clerk of the county in which such arrestment shall have been used a bond or enactment of caution, by one or more good and sufficient cautioners, to the satisfaction of such sheriff clerk, agreeably to the form in schedule (B.) subjoined to this Act, or on consigning in the hands of such sheriff clerk the amount of the debt or demand, and a reasonable sum for expences, or on producing to such sheriff clerk evidence of the defender having obtained decree of absolvitor in the action, or of his having paid the sums decerned for, or of his having consigned in the hands of the clerk of the court in which the action depended the sums decerned for, or the amount of the debt or demand, and a reasonable sum for expences, when no decree has yet been pronounced; and a certificate by the sheriff clerk of the county in which such arrestment shall have been used, of a bond or enactment of caution to the extent of the debt or demand, and expences, having been lodged with him, or of consignation as above provided having been made in his hands, shall be a sufficient authority for obtaining a warrant for loosing any other arrestment used on the dependence of the same action, without any other caution being found, or any other consignation being made by the defender.

Rendering Arrestments effectual.

VI. And be it enacted, That any person entitled to pursue an action of forthcoming, where the sum or demand shall not exceed the value of one hundred pounds *Scots*, exclusive of expences and fees of extract, who shall choose to have the same heard and determined according to the summary mode provided by this Act, shall proceed by summons or complaint agreeably to the form in schedule (C.) subjoined to this Act, concluding for payment of the sum for which arrestment has been used, or for delivery of the goods and effects arrested, which summons or complaint, being signed by the sheriff clerk of the county in which the arrestee resides, shall be a sufficient warrant and authority to any sheriff's officer for summoning the arrestee and the common debtor to appear and answer at a sheriff court of the county in which the arrestee resides, the same not being sooner than the sixth day after the date of citation, and also for summoning witnesses and havers for all parties; and in the event of the common debtor not residing and not being found within the county in which such action of forthcoming shall be brought, he may be cited in any other county on the said warrant, the same being first presented to and indorsed by the sheriff clerk of such other county, who is hereby required to indorse the same on payment of the fee herein-after mentioned, to appear at a sheriff court in the county in which the arrestee resides, the same not being sooner in such case than on the twelfth day after the date of citation: Provided always, that the arrestee and the common debtor shall be cited to appear on the same court day, and that a copy of the said summons or complaint, with the citation annexed thereto, shall be served by the sheriff's officer on every defender personally, or at his dwelling place, all in the same manner and under the like conditions as to citation as hereinbefore provided in other causes and prosecutions under authority of this Act, but always allowing to a party cited to appear in the sheriff court of a different county from that in which the citation shall be given double the time required by this Act to be allowed to a party cited to appear in the sheriff court of the county within which the citation shall be given.

Compelling Attendance of Witnesses.

VII. And be it enacted, That every officer of court to whom any warrant as aforesaid for citing witnesses and havers shall be entrusted, shall cite such witnesses or havers as any party shall require; and all such warrants shall have the same force and effect in any other county as in the county where they are originally issued, the same being first presented to and indorsed by the sheriff clerk of such other county, who is hereby required to indorse the same, on payment of the fee herein-after mentioned;

No. XXXIV. 10 Geo. IV. c. 55.

and if any witness or haver, duly cited, shall fail to appear, it shall be competent to any party for whom such witness or haver is summoned, to apply for a new warrant to compel his attendance at the next court, or any subsequent court to which the case may be adjourned; which warrant shall require him to attend to give evidence, under a penalty not exceeding forty shillings, unless a reasonable excuse be offered and sustained; and every such penalty shall be paid to the party applying for the new warrant as aforesaid, and shall be recovered in the same manner as other penalties under this Act, without prejudice always to letters of second diligence, for compelling witnesses and havers to attend as at present competent; and it shall be no objection to any witness that such witness has appeared without citation, or without having been regularly cited.

Hearing and Judgment.

VIII. And be it enacted, That when the parties shall appear the sheriff shall hear them *viva voce*, and examine witnesses or havers upon oath, and may also examine the parties, and may put them or any of them upon oath, and may pronounce judgment; and the decree stating the amount of the expences, if any, found due to any party, (which may include personal charges, if the sheriff think fit), and containing warrant for arrestment, and for poinding and imprisonment, shall be annexed to the summons or complaint, and on the same paper with it, agreeably to the form in schedule (A.) subjoined to this Act; which decree and warrant, being signed by the clerk, shall be a sufficient authority for instant arrestment, and also for poinding and sale, and imprisonment, six free days from the date of the decree, if the party against whom it shall have been given was personally present when it was pronounced, but if he was not so present, poinding and sale, and imprisonment, shall only proceed after a charge of six free days, by serving a copy of the complaint and decree on the party personally or at his dwelling place; and if any decree shall not be enforced by poinding or imprisonment within a year from the date thereof, or from a charge for payment given thereon, such decree shall not be enforced without a new charge duly given as aforesaid.

Arrestment.

Procurators, &c., not to appear or plead, nor Pleadings, &c. entered, without Leave of Court.

IX. And be it enacted, That no procurators solicitors nor any persons practising the law, shall be allowed to appear or plead for any party without leave of the court; nor shall any of the pleadings, arguments, minutes, or evidence be reduced to writing, or be entered upon any record, unless with leave of the court first had and obtained, in consequence of any difficulty in point of law, or special circumstances of any particular case: Provided always, that when the sheriff shall order any pleadings, arguments, minutes, or evidence to be reduced to writing, every case in which such order shall be made shall thenceforth be conducted according to the ordinary forms and proceedings in civil causes and in prosecutions for statutory penalties, and shall be disposed of in all respects as if this Act had not been passed.

Parties not appearing or making sufficient Excuse, to be held confessed.

X. And be it enacted, That any defender who has been duly cited personally, or by two citations at his dwelling place, failing to appear personally or by one of his family, or by such person as the sheriff shall allow, shall be held confessed, and the other party shall obtain decree against him; and in like manner, if the pursuer or prosecutor shall fail to appear personally, the defender shall obtain decree of absolvitor, unless in either case a sufficient excuse for delay shall be stated; on which account, or on account of the absence of witnesses or any other good reason, it shall at all times be competent for the sheriff to adjourn any case to the next or any other court day, and to ordain the parties and witnesses then to attend.

Re-hearing in Cases of Decree in Absence.

XI. And be it enacted, That where a decree has been pronounced in absence of a defender, it shall be competent for him, upon consigning the sum decerned for in the hands of the clerk, at any time before the days of the charge shall elapse, to obtain from the clerk a warrant, signed by him, sisting execution till the next court day, or to any subsequent court day to which the same may be adjourned, and containing authority for citing the other party, and witnesses and havers for both parties; and the clerk shall be bound to certify to the sheriff on the next court day every such

application for re-hearing and sist granted; and such warrant being duly served upon the other party personally, or by two citations at his dwelling place, in the manner provided in other cases by this Act, shall be an authority for re-hearing the cause; and in like manner where absolvitor has passed in absence of the pursuer or prosecutor, it shall be competent for him, at any time within one calendar month thereafter, upon consigning in the hands of the clerk the sum awarded by the sheriff in his decree of absolvitor as the expences for the defender and his witnesses, to obtain a warrant, signed by the clerk, for citing the defender and witnesses for both parties, which warrant, being duly served upon the defender personally, or by two citations at his dwelling place, in the manner provided in other cases by this Act, shall be an authority for re-hearing the cause, as hereby provided in the case of a re-hearing at the instance of the defender; the said sum of expences, awarded by the sheriff and consigned as aforesaid, being in every case paid over to the defender, unless the contrary shall be specially ordered by the court; and all such warrants for re-hearing shall be in force, and may be served by an officer of the county where they are issued, in any other county, without indorsation, or other authority than this Act.

Books of Causes, &c. to be kept.

XII. And be it enacted, That the sheriff clerk shall keep a book, wherein shall be entered all causes conducted under the authority of this Act, setting forth the names and designations of the parties, and whether present or absent at the calling of the cause, the nature and amount of the claim, and date of giving it in, the mode of citation, the several deliverances or interlocutors, and the final decree, with the date thereof; which book shall be signed each court day by the sheriff, and the said entries by the clerk shall be according to the form in schedule (D.) subjoined to this Act, or with such addition as the sheriff shall appoint; and the sheriff clerk shall also keep a book or books, containing a register or registers of all indorsations of decrees and warrants issued in other counties, and of all warrants for arrestment on the dependence, and of all loosings of arrestment, and of all reports of poindings, and sales of goods and effects arrested, which registers shall be open and patent, at office hours, to all concerned, on payment of the fee herein-after mentioned.

Power to direct Payment by Instalments.

XIII. And be it enacted, That the sheriff may, if he think proper, direct the sum or sums found due, to be paid by instalments weekly monthly or quarterly, according to the circumstances of the party found liable, and under such conditions or qualifications as he shall think fit to annex.

Decrees may be enforced in any other County.

XIV. And be it enacted, That any decree obtained under this Act may be enforced against the person or effects of any party in any other county as well as in the county where the decree is issued: Provided always, that such decree or an extract thereof shall be first produced to and indorsed by the sheriff clerk of such other county, who is hereby required to make such indorsement on payment of the fee herein-after mentioned.

Appraisement and Sale of Effects.

XV. And be it enacted, That the poinding and sale shall be carried into effect by the officer in a summary way, by getting the effects poinded duly appraised by two persons who may also be witnesses to the poinding, and leaving an inventory or list thereof for the party whose effects are poinded and carrying such effects either to the nearest market-town or to the nearest village, and selling the same to the highest bidder by public roup, between the hours of eleven forenoon and three afternoon at the cross or such most public place, on previous notice of at least two hours by the crier, but reserving to the sheriff by such general regulation or special order in any particular case as he shall think fit, to appoint a different hour or place for the sale, or a longer or different kind of notice to be given of the time of selling; and the overplus of the price, if there shall be any, after payment of the sums decerned for, and the expences, if expences are awarded, including what is allowed by this act for poinding and sale, shall be returned to the owner; or if the effects are not sold the same shall be delivered over at the appraised value to the creditor to the amount of the sum decerned for, and expences, if awarded, and the allowances for poinding and sale; and a report of the poinding and sale and

No. XXXIV. 10 Geo. IV. c. 55.

proceeds or of the delivery of the effects, shall in every case be made by the officer to the sheriff clerk within eight days thereafter, agreeably to the form in schedule (D.) subjoined to this Act; and where the sheriff shall order a sale of goods or effects arrested, the same course of proceeding shall be adopted as is above directed in the case of poinding and sale; and no officer to whom the enforcement of decrees or warrants in cases falling under this Act may be committed shall be liable to any penalty fine or punishment for selling goods or effects under authority of such decrees or warrants, by public auction, although such officer may not be licensed as an auctioneer; any thing in any Act or Acts to the contrary notwithstanding.

Actions for Damages by Riot under 3 G. 4. c. 33. and for Recovery of Assessments, authorized by 9 G. 4. c. 39. may be determined by this Act.

XVI. And be it enacted, That all actions of damages for compensation for loss or injury by the act or acts of any unlawful riotous or tumultuous assembly in *Scotland*, or of any person engaged in or making part thereof, authorized to be brought by an Act passed in the third year of his present Majesty's reign where the sum concluded for does not exceed one hundred pounds *Scots;* as also all actions for recovery of assessments by virtue of an Act passed in the ninth year of his present Majesty's reign, intituled *An Act for the Preservation of the Salmon Fisheries in* Scotland, may be heard and determined in the summary way provided by this Act, and this notwithstanding the amount of such assessments shall exceed one hundred pounds *Scots*.

Holding Courts at other than usual Places.

20 G. 2. c. 43.

XVII. And be it enacted, That at all times when the sheriff of any shire shall judge it expedient to hold courts for the purposes of this Act whether in time of session or of vacation, at any other than the usual place or places for holding the same, or shall be directed so to do by his Majesty's warrant, as provided in other cases by Act of Parliament, the sheriff clerk is hereby required to attend at such times and places, and to find the necessary accommodation for holding such courts all on his own charges and expences, in respect of the fees allowed by this Act.

Decree not subject to Appeal, except as herein provided.

XVIII. And be it enacted, That no decree given by any sheriff in any cause or prosecution raised under the authority of this Act where the sheriff shall not have ordered any pleadings, arguments, minutes, or evidence to be reduced to writing, shall be subject to advocation, suspension, or appeal, or any other form of review or stay of execution, other than herein-before provided, either on the merits or on account of any omission in the proceedings or of any irregularity or informality, or on any ground or reason whatever excepting only an appeal on the ground of corruption or malice and oppression on the part of the sheriff, to the next circuit Court of Justiciary, or where there are no circuit courts, to the High Court of Justiciary at *Edinburgh*, in the manner and by and under the rules limitations conditions and restrictions contained in an Act passed in the twentieth year of the reign of King *George* the Second, for taking away and abolishing the heritable jurisdictions in *Scotland*.

20 G. 2. c. 43.

Fees to be taken.

XIX. And be it enacted, That the following and no other or higher fees shall be allowed to be taken for any matters done in any cause or prosecution raised under the authority of this Act:

CLERKS' FEES:

Summons, one shilling.
Each copy for service, sixpence.
Entering in procedure book, sixpence.
Warrant to cite *de novo*, and re-entering, sixpence.
Warrant to arrest on dependence, and entering in book, one shilling.
Loosing arrestment, one shilling.
Bond of caution, one shilling and sixpence.
Second diligence for compelling witnesses or havers to attend, one shilling.
For every oath of witness, four-pence.
For every oath of party, one shilling.
Decree, sixpence.

Re-hearing, one shilling and sixpence.
Indorsation of decree or warrant, and entering in book, one shilling.
Receiving report of poinding and sale, and entering in book, one shilling and sixpence.
Inspection of book or books of indorsations and reports, sixpence.

OFFICERS' FEES, INCLUDING ASSISTANTS:

First citation of a party, and execution, if citation given personally, one shilling.
Ditto, ditto, if citation not given personally, sixpence.
Second ditto, ditto, personally or not, sixpence.
Citation of a witness or haver, sixpence.
Charging on decree and returning execution of charge, one shilling.
Arrestment and returning execution thereof, sixpence.
Intimation of loosing arrestment and execution thereof, sixpence.
Poinding and inventory, two shillings and sixpence.
Sale and report, two shillings and sixpence.
Enforcing warrant of imprisonment, three shillings.
Officer's travelling expences, for each complete mile from the court-house or the residence of the officer employed, the distance travelled in returning after execution of the duty not to be reckoned, five-pence.
Assistants, each, *per* mile, in the same manner, four-pence.

CRIER'S FEE.

For calling each cause, one penny.

And the said fees shall be subject to modification in causes of very small amount, or where the complaint is directed against two or more defenders.

Table of Fees to be printed and hung up.

XX. And be it enacted, That an exact copy of the immediately preceding section of this Act shall be printed on each summons or complaint and on each service copy thereof; and shall also be at all times hung up in every sheriff clerk's office, and in every sheriff court place, during the holding of any sheriff's small debt court; and any sheriff clerk from whose office any summons or service copy thereof shall be issued, not having such copy of the said section printed thereon, or at any time omitting to have such copy hung up in his office or in the sheriff court place as aforesaid, shall be liable in a penalty not exceeding forty shillings, to be recovered at the instance of any person who shall prosecute for the same, and to be disposed of as the sheriff shall direct.

Officers neglecting Duty, to be fined.

XXI. And be it enacted, That in all or any of the cases above-mentioned, where any decree or warrant shall have been indorsed as aforesaid, the sheriff's officers of the county where such decree or warrant has been originally issued as well as of any county wherein the same is indorsed, are hereby authorized and required to obey and enforce such decree or warrant within such other county; and any sheriff's officer failing to report any poinding and sale as above-directed or violating or neglecting any other duty entrusted to him under this Act or wilfully acting contrary to any provision thereof, shall be liable in a penalty not exceeding forty shillings, to be recovered at the instance of any person aggrieved thereby and to be disposed of as the sheriff shall direct, reserving always all further claim of damages otherwise competent against any such officer, and without prejudice to the sheriff's lawful authority to remove and punish all officers of his court for misbehaviour or malversation in office.

Privileged Persons not exempt.

XXII. And be it enacted, That no person shall be exempt from the jurisdiction of the sheriff in any cause or prosecution raised under the authority of this Act, on account of privilege, as being a member of the college of justice.

No. XXXIV. 10 Geo. IV. c. 55.

XXIII. And be it enacted, That in all causes and prosecutions wherein the debt demand or penalty shall not exceed the value of one hundred pounds *Scots*, exclusive of expences and fees of extract which shall in future be brought or carried on before any sheriff court not according to the summary form herein provided, it shall be lawful for any sheriff notwithstanding to allow no other or higher fees to be taken than those above-mentioned.

Expences to be taxed.

Explanation of Words.

XXIV. And be it enacted, That in all cases in this or any Act passed or to be passed affecting *Scotland*, where any of the terms sheriff, sheriff clerk, shire, sheriffdom, or county, shall be used, the same shall be deemed and taken to apply to any stewart or stewart clerk or stewartry in *Scotland*.

SCHEDULE (A.)

No. 1.

SUMMONS or COMPLAINT in a CIVIL CAUSE.

A. B. Sheriff of the shire of to officers of court, jointly and severally.

WHEREAS it is humbly complained to me by *C. D.* [*design him*] that *E. F.* [*design him*] defender is owing the complainer the sum of [*here insert the origin of debt or ground of action*], which the said defender refuses or delays to pay; and therefore the said defender ought to be decerned and ordained to make payment thereof to the complainer, with expences: Herefore it is my will, that on sight hereof ye lawfully summon the said defender to compear before me or my substitute in the court-house at upon the day of at of the clock, to answer at the complainer's instance in the said matter, with certification, in case of failure, of being held as confessed; requiring you also to deliver to the defender a copy of any account pursued for, and that ye cite witnesses and havers for both parties to compear at the said place and date to give evidence in the said matter. Given under the hand of the clerk of court at the day of

J. P. Sheriff Clerk.

No. 2.

CITATION for DEFENDER.

E. F. Defender above designed, You are hereby summoned to appear and answer before the sheriff, in the matter, and at the time and place, and under the certification set forth in the above copy of the summons or complaint against you.

This notice* served upon the day of by me

J. T. Sheriff Officer.

No. 3.

EXECUTION of CITATION of DEFENDER.

UPON the day of eighteen hundred and I duly summoned the above-designed *E. F.* defender, to appear and answer before the sheriff, in the matter, and at the time and place, and under the certification above set forth. This I

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* If there is an account, the officer must serve a copy of it along with the copy of the summons or complaint, and add here, "with a copy of the account."

did by leaving a full copy of the above summons or complaint, with a citation thereto annexed,* for the said defender [*in his hands personally or otherwise, as the case may be*].

J. T. Sheriff Officer.

No. 4.

CITATION for WITNESSES.

M. N. [*design him*] You are hereby summoned to appear before the sheriff of the shire of or his substitute, in the court-house at upon the day of eighteen hundred and at of the clock, to bear witness for the [pursuer *or* defender, *as the case may be*] in the summons or complaint, at the instance of *C. D.* [*design him*] against *E. F.* [*design him*].

This notice, served on the day of by me,

J. T. Sheriff Officer.

No. 5.

EXECUTION of CITATION of WITNESSES.

UPON the day of eighteen hundred and I duly summoned *M. N.* &c. [*design them*] to appear before the sheriff of the shire of or his substitute, in the court-house at upon the day of eighteen hundred and at of the clock, to bear witness for the in the summons or complaint at the instance of *C. D.* [*design him*] against *E. F.* [*design him*]. This I did by delivering a just copy of citation, signed by me, to the said *M. N.* [*personally or otherwise, as the case may be*].

J. T. Sheriff Officer.

No. 6.

DECREE for PURSUER in a CIVIL CAUSE.

AT the day of one thousand eight hundred and the sheriff of the shire of finds the within-designed defender liable to the also within designed pursuer in the sum of with of expences and decerns and ordains instant execution by arrestment, and also execution to pass hereon by poinding and sale and imprisonment, after free days.

J. P. Sheriff Clerk.

No. 7.

SUMMONS or COMPLAINT for STATUTORY PENALTY.

A. B. Sheriff of the shire of to officers of court jointly and severally.

WHEREAS it is humbly complained to me by *C. D.* procurator fiscal of court, [*or, where a private party only,*] *G. H.* [*or, where a private party prosecutes with concurrence of the procurator fiscal,*] *G. H.* with concurrence of *C. D.* procurator fiscal of court, that *E. F.* defender has incurred the penalty of imposed by the Act of Parliament [*mention the Act*], the said defender having [*state the offence, specifying time*

* If there is an account, the officer must serve a copy of it along with the copy of the summons or complaint; and that being done, add here the words, "and a copy of the account."

and place]: Therefore the said defender ought to be decerned and ordained to make payment of the said penalty, with expences, [*state to whom and in what proportions payable*]: Herefore it is my will, that on sight hereof ye lawfully summon the said defender to compear before me or my substitute, in the court house at upon the day of at of the clock, to answer at the complainer's instance in the said matter, with certification, in case of failure, of being held as confessed; and that ye cite witnesses and havers for both parties to compear at the same place and date, to give evidence in the said matter. Given under the hand of the clerk of court, at the day of

J. P. Sheriff Clerk.

Concurs *C. D.* Procurator Fiscal.

[*For citation for defender, and execution thereof, and citation for witnesses, and execution thereof, see Nos. 2, 3, 4, and 5 respectively.*]

No. 8.

DECREE for PROSECUTOR in PROSECUTION for PENALTY.

AT the day of one thousand eight hundred and the sheriff of the shire of finds that the within-designed *E. F.* defender has incurred the penalty of as libelled, payable to [*if there is a power to mitigate, and a mitigation, add,* "which is hereby mitigated to the sum of "]; and also finds the said defender liable in of expences to the complainer, and decerns and ordains instant execution by arrestment, and also execution by poinding and sale and imprisonment, after free days.

J. P. Sheriff Clerk.

No. 9.

DECREE of ABSOLVITOR, with EXPENCES.

[*The following will answer either for civil causes or prosecutions for penalties.*]

AT the day of one thousand eight hundred and the sheriff of the shire of assoilzies the within-designed *E F.* defender from the within complaint, and finds the within-designed *C. D.* pursuer liable to him in the sum of of expences, the expence of extracting the decree included; and decerns and ordains instant execution by arrestment, and also execution to pass hereon by poinding and sale and imprisonment, after free days.

J. P. Sheriff Clerk.

No. 10.

CHARGE on DECREE.

E. F. above designed, you are hereby charged to implement the decree of which, and of the complaint whereon the same proceeded, the above is a copy, within six days from this date, under pain of poinding and sale and imprisonment, without further notice. This charge given by me, on the day of before these witnesses *O. P.* and *Q. R.* [*design them*].

J. T. Sheriff Officer.

No. 11.

EXECUTION of CHARGE.

[*To be on the same paper with the complaint and decree.*]

ON the day of eighteen hundred and I duly charged *E. F.* above designed to implement the

above decree within the time and under the pains therein expressed. This I did by delivering a just copy of the foregoing complaint and decree, and a charge thereto annexed, subscribed by me, to the said *E. F.* [*personally, or as the case may be*], before these witnesses, *O. P.* and *Q. R.* [*design them*] hereto with me subscribing.

J. T. Sheriff Officer.

O. P. Witness.
Q. R. Witness.

SCHEDULE (B.)

Warrant for Arrestment on the Dependence of an Action.

A. B Sheriff of the shire of to officers of court, jointly and severally.

WHEREAS it is humbly shown to me by *C. D.* [*design him*] complainer, that he has raised an action before me against *E. F.* [*design him*], concluding that the said defender ought to be decerned and ordained to make payment to the said complainer of [*here state the conclusions of the summons or complaint*] conform to summons or complaint given under the hand of the clerk of court at on the day of ; and that the said defender, to the prejudice of the complainer, intends to uplift and dispose of all sums of money goods and effects owing or belonging to the said defender: Herefore it is my will, that on sight hereof ye lawfully fence and arrest all sums of money goods and effects whatsoever owing or belonging to the said defender, wherever or in whose hands soever the same can be found, to an amount or extent not exceeding the value of one hundred pounds *Scots*, in the hands of any arrestee, all to remain under sure fence and arrestment at the complainer's instance, until due consignation be made, or until sufficient caution be found as accords of law. Given under the hand of the clerk of court at the day of

J. P. Sheriff Clerk.

Arrestment on the Dependence of an Action.

BY virtue of a warrant of the sheriff of the shire of given under the hand of the clerk of court at on the day of for arrestment on the dependence of an action raised before the said sheriff, at the instance of *C. D.* [*design him*] complainer, against *E. F.* [*design him*] defender, I hereby fence and arrest in the hands of you *K. L.* [*design him*] all sums of money owing by you to the said defender, or to any other person, for his use and behoof, and all goods and effects in your custody belonging to the said defender, and that to an amount or extent not exceeding the value of one hundred pounds *Scots*, all to remain under sure fence and arrestment at the complainer's instance, until due consignation be made, or until sufficient caution be found as accords of law. This I do on the day of before these witnesses, *O. P.* and *Q. R.* [*design them*].

J. T. Sheriff Officer.

Execution of Arrestment on the Dependence of an Action.

[*To be on the same paper with the warrant of arrestment.*]

UPON the day of eighteen hundred and betwixt the hours of and by virtue of the foregoing warrant, I lawfully fenced and arrested in the hands of *K. L.* [*design him*] all sums of money owing by him to the foresaid *E. F.* defender, or to any other person, for his use and behoof, and all goods and effects in the custody of the said arrestee, belonging to the said defender, and that to an amount or extent not exceeding the value of one hundred pounds *Scots*, all to remain

No. XXXIV. 10 Geo. IV. c. 55.

under sure fence and arrestment at the foresaid complainer's instance, until due consignation be made, or until sufficient caution be found as accords of law. This I did by delivering a just copy of arrestment, subscribed by me, to the said arrestee personally, [*or as the case may be*], before these witnesses, *O. P.* and *Q. R.* [*design them*] hereto with me subscribing.

J. T. Sheriff Officer.

O. P. Witness.
Q. R. Witness.

BOND OR ENACTMENT of CAUTION for LOOSING ARRESTMENT.

AT on the day of eighteen hundred and compeared *G. H.* [*design him*], who hereby judicially binds himself, his heirs, executors, and successors, as cautioners acted in the sheriff court books of the shire of for *E. F.* [*design him*] common debtor, against whom arrestment was used at the instance of *C. D.* [*design him*], in the hands of *K. L.* [*design him*], on the day of in virtue of [*describe the warrant*], dated the day of that the sums of money goods and effects owing or belonging to the said common debtor, arrested as aforesaid, shall be made forthcoming as accords of law.

G. H.

WARRANT for LOOSING ARRESTMENT used on the DEPENDENCE of an ACTION.

WHEREAS arrestment was used on the dependence of an action, at the instance of *C. D.* [*design him*] against *E. F.* [*design him*], in the hands of *K. L.* [*design him*], on the day of by virtue of a warrant of the sheriff of the shire of given under the hand of the clerk of court at the day of : And whereas the said *E. F.* has now made sufficient consignation in the hands of the sheriff clerk of [*or, if caution has been found, say*] has found sufficient caution acted in the sheriff court books of by *G. H.* [*design him*] his cautioner, [*here state the nature of the caution*], in order to the loosing of the said arrestment, warrant for loosing the said arrestment is hereby granted accordingly. Given under the hand of the clerk of court at the day of

J. P. Sheriff Clerk.

INTIMATION of LOOSING ARRESTMENT.

[*To be on the same paper with a copy of the foregoing warrant.*]

K. L. [*design him*]. Take notice, that by virtue of the warrant whereof the above is a copy, the arrestment on the dependence of the action above mentioned, used in your hands at the instance of the foresaid *C. D.* against the foresaid *E. F.*, is loosed and taken off.

This notice served on the day of by me,

J. T. Sheriff Officer.

EXECUTION of INTIMATION of LOOSING ARRESTMENT.

[*To be on the same paper with the original warrant for loosing the arrestment.*]

UPON the day of eighteen hundred and I duly intimated the above warrant to *K. L.* [*design him*] arrestee. This I did by leaving a full copy thereof, and intimation thereon, subscribed by me, for him [*in his hands personally, or as the case may be*].

J. T. Sheriff Officer.

SCHEDULE (C.)

Summons or Complaint in Cases of Forthcoming.

A. B. Sheriff of the shire of to
Officers of court jointly and severally.

WHEREAS it is humbly complained to me by *C. D.*, upon and against *K. L.* arrestee and *F. F.* common debtor, that the said common debtor is owing the complainer the sum of
contained in [*describe shortly the decree, or bill, or bond, et cetera, by which the debt is constituted*]; and that the complainer, on the
day of years, in virtue of a warrant by
dated the day of arrested in the hands
of the said arrestee [*here insert the terms of the arrestment used*], which the said arrestee now refuses or delays to make forthcoming: therefore the said arrestee and the said common debtor for his interest, ought to be decerned and ordained to make forthcoming, pay and deliver to the complainer the money, goods, and effects arrested as aforesaid, or so much thereof as will satisfy and pay the said sum of
owing to the complainer as aforesaid: Herefore it is my will that on sight hereof ye lawfully summon the said arrestee and the said common debtor for his interest to compear before me or my substitute in the court-house at upon the day
of years, at of the clock, to answer at the complainer's instance in the said matter, with certification, in case of failure, of being held as confessed; and that ye cite witnesses and havers for both parties to compear at the said place and date, to give evidence in the said matter. Given under the hand of the clerk of court at
the day of
years.

J. P. Sheriff Clerk.

[*The citations and executions and decree for the defender, with expences, may be the same as in schedule* (*A.*)]

Decree for the Pursuer in Cases of Forthcoming.

AT the day of one thousand
eight hundred and the sheriff for the
shire of decerns and ordains the within-designed
defender, to make forthcoming, pay, and
deliver to the also within-designed pursuer
[*if the arrestee has money arrested in his hands, the rest of the judgment will be the same as in ordinary cases; if there are goods and effects to be made forthcoming, the rest of the judgment will be as follows:*] the arrested goods
and effects following; *videlicet*,
and grants warrant to sell the same, or as much thereof as will satisfy the
sum of and
of expences of process, and the expence of sale; and failing the said defender making forthcoming and delivering the said goods and effects
within then to make payment to the said
pursuer of the said sum of
for recovery of which sums, the said period being elapsed without forthcoming and delivery of the said goods and effects, ordains instant execution by arrestment, and also execution to pass hereon by poinding and sale, and imprisonment, after
free days.

J. P. Sheriff Clerk.

SCHEDULE (D.)

REPORT of POINDING and SALE.

Report of the Poinding and Sale at the instance of *C. D.* [*design him*] against *E. F.* [*design him*].

Lots.	Effects.	Appraised at	Sold at
		£ s. d.	£ s. d.
1.	An Eight-day Clock -	4 0 0	4 10 0
2.	Six Chairs, at 6*s.* - -	1 16 0	1 18 0
3.	One Table - - - -	0 8 0	0 8 0
4.	One Chest of Drawers -	1 12 0	1 12 0
		7 16 0	8 8 0

UPON the day of eighteen hundred and between the hours of and by virtue of a decree of the sheriff of given under the hand of the clerk of court at on the day of at the instance of *C. D.* above-designed, against *E. F.* above-designed, for payment of the sums of

I passed with the witnesses and appraisers after named and designed to and then and there, after demanding payment of the sums contained in said decree past due, and payment not being made I poinded the effects above enumerated belonging to the said debtor; and after making an inventory or list thereof, and getting the same duly appraised, on oath, at the several values respectively above specified in the first column, and amounting in all to [*here insert the amount in words*], and leaving a copy of such inventory or list and appraisement with the said debtor personally, [*or as the case may be,*] I carried the said effects to the of and there, betwixt the hours of and and after public notice of at least hours I sold the said effects by public roup to the highest bidder, at the prices above-specified in the second column, for each lot respectively,* and amounting in all to [*here insert the amount in words*]. These things were so done before and with *O. P.* and *Q. R.* [*design them*] witnesses and appraisers, in the premises hereto with me subscribing.

J. T. Sheriff Officer.

O. P. Witness and Appraiser.
Q. R. Witness and Appraiser.

Reported to the sheriff clerk of the shire of at the day of by me,
J. T. Sheriff Officer.

* If the effects are not sold, the tenor of the report must be altered according to the state of the fact; for instance, ["I exposed the "said goods and effects to public sale, but no "person having offered the appraised value, "therefore I declared the same to belong to "the said *C. D.* at the said respective ap- "praised values, in payment to that amount of "the sums in said decree."] In case the goods poinded, or part of them shall sell for more than the sums in the decree, and expences of poinding and sale, say, ["I sold "part of the said effects, viz. Lots 1, 2, and 3, "by public roup to the highest bidder, at the "prices above specified in the second column "for each of said lots respectively, and "amounting in all to [*here insert the amount "in words,*] and I returned to the said debtor "the sum of being the overplus "of the price, after payment of the sums de- "cerned for past due, and the sum of "being the expences of poinding and sale, "conform to the Act of Parliament; and I "also returned to the said debtor the effects "specified in the other lots above enume- "rated."]

SCHEDULE (E.)

No.	Dates of Complaints.	Pursuers.	Defenders.	Sums.	How due.	How cited.	By what Officer.	Interlocutors and Decrees.

N. B.—After the Name of each Pursuer and Defender let the letter P. or A. be added, in order to mark whether the party was present or absent when the cause was called; let expences be also entered under the head of "Interlocutors."

PART IV.

CLASS XVII.

Statutes relating to Personal Liberty.

[No. I.] 9 Henry III. c. 29.—None shall be condemned without trial. Justice shall not be sold or deferred.

9 H. III. c. 29. 'NO freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed: *nor will we not pass upon him nor condemn him,*(1) but by lawful judgment of his peers, or by law of the land. We will sell to no man, we will not deny, or defer, to any man, either justice or right.'

[No. II.] 3 Charles I. c. 1.—The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's Royal Answer thereunto in full Parliament.

To the King's most excellent Majesty.

3 Charles I. c. 1. The Petition of Right. 34 Ed. I. st. 4. c. 1. 25 Ed. 3. st. 1. c. 6. 1 Ed. 3. st. 2. c. 6. 11 R. 2. c. 9. 1 R. 3. c. 2. 'HUMBLY shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons, in Parliament assembled, That whereas it is declared and enacted by a statute made in the time of the reign of King *Edward* the First, commonly called *statutum de tallagio non concedendo,* That no tallage or aid shall be laid or levied by the King or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of Parliament holden in the five and twentieth year of the reign of King *Edward* the Third, it is declared and enacted, That from henceforth no person should be compelled to make any loans to the King against his will, because such loans were against reason and the franchise of the land: and by other laws of this realm it is provided, That none should be charged by any charge or imposition called a benevolence, nor by such like charge: By which the statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, That they should not be compelled to contribute to any tax, tallage, aid, or other like charge, not set by common consent in Parliament.

'II. Yet nevertheless, of late divers commissions directed to sundry commissioners in several counties with instructions, have issued; by

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(1) The words above, marked in Italics, do by no means express the sense of the original. The two verbs *ibimus* and *mittemus* evidently stand in contradistinction to each other, and are indeed much easier expounded than translated; therefore, we cannot do better than recur to Lord Coke's exposition, which is as follows:—'No man shall be condemned at the King's suit, either before the King in his Bench, where the pleas are *coram rege,* (and so are the words *nec super eum ibimus,* to be understood) nor before any other commissioner or judge whatever (and so are the words *nec super eum mittemus,* to be understood.')—*Note to Ruffhead's Edition of the Statutes.*

'means whereof your people have been in divers places assembled, and 'required to lend certain sums of money unto your Majesty, and many 'of them, upon their refusal so to do, have had an oath administered 'unto them not warrantable by the law or statutes of this realm, and 'have been constrained to become bound to make appearance and give 'attendance before your privy council and in other places, and others 'of them have been therefore imprisoned, confined, and sundry other 'ways molested and disquieted; and divers other charges have been laid 'and levied upon your people in several counties by lord lieutenants, 'deputy lieutenants, commissioners for musters, justices of peace and 'others, by command or direction from your Majesty, or your privy 'council, against the laws and free customs of the realm.

'III. And where also by the statute called "The Great Charter of the 'Liberties of *England*," it is declared and enacted, That no freeman 'may be taken or imprisoned, or be disseised of his freehold or liberties, 'or his free customs, or be outlawed or exiled, or in any manner de- 'stroyed, but by the lawful judgment of his peers, or by the law of the 'land. 9 H. 3. st. 1. c. 29.

'IV. And in the eight and twentieth year of the reign of King *Edward* 'the Third, it was declared and enacted by authority of Parliament, 'That no man, of what estate or condition that he be, should be put 'out of his land or tenements, nor taken, nor imprisoned, nor dis- 'herited, nor put to death, without being brought to answer by due 'process of law: 28 Ed. 3. c. 3.

'V. Nevertheless against the tenor of the said statutes, and other the 'good laws and statutes of your realm to that end provided, divers 'of your subjects have of late been imprisoned without any cause 'shewed; and when for their deliverance they were brought before your 'justices by your Majesty's writs of *habeas corpus*, there to undergo and 'receive as the court should order, and their keepers commanded to 'certify the causes of their detainer, no cause was certified, but that 'they were detained by your Majesty's special command, signified by 'the Lords of your privy council, and yet were returned back to several 'prisons, without being charged with any thing to which they might 'make answer according to the law. 37 Ed. 3. c. 18. 38 Ed. 3. st. 2. c. 9. 42 Ed. 3. c. 3. 17 R. 2. c. 6.

'VI. And whereas of late great companies of soldiers and mariners 'have been dispersed into divers counties of the realm, and the inhabit- 'ants against their wills have been compelled to receive them into their 'houses, and there to suffer them to sojourn, against the laws and cus- 'toms of this realm, and to the great grievance and vexation of the 'people:

'VII. And whereas also by authority of Parliament, in the five 'and twentieth year of the reign of King *Edward* the Third, it is declared 'and enacted, That no man should be forejudged of life or limb against 'the form of the *Great Charter* and the law of the land; and by the said '*Great Charter* and other the laws and statutes of this your realm, no 'man ought to be adjudged to death but by the laws established in this 'your realm, either by the customs of the same realm, or by Acts 'of Parliament: And whereas no offender of what kind soever is ex- 'empted from the proceedings to be used, and punishments to be in- 'flicted by the laws and statutes of this your realm: Nevertheless of late 'time divers commissions under your Majesty's great seal have issued 'forth, by which certain persons have been assigned and appointed com- 'missioners, with power and authority to proceed within the land, ac- 'cording to the justice of martial law, against such soldiers or mariners, 'or other dissolute persons joining with them, as should commit any 'murther, robbery, felony, mutiny or other outrage or misdemeanor 'whatsoever, and by such summary course and order as is agreeable to 'martial law, and as is used in armies in time of war, to proceed to the 'trial and condemnation of such offenders, and them to cause to be exe- 'cuted and put to death according to the law martial. 25 Ed. 3. st. 5. c. 4. 9 H. 3. st. 1. c. 29. 25 Ed. 3. st. 5. c. 4. 28 Ed. 3. c. 3.

'VIII. By pretext whereof some of your Majesty's subjects have been 'by some of the said commissioners put to death, when and where, if

No. II. 3 Charles I. c. 1.

'by the laws and statutes of the land they had deserved death, by the 'same laws and statutes also they might, and by no other ought to have 'been judged and executed:

'IX. And also sundry grievous offenders, by colour thereof claiming 'an exemption, have escaped the punishments due to them by the laws 'and statutes of this your realm, by reason that divers of your officers 'and ministers of justice have unjustly refused or forborn to proceed 'against such offenders according to the same laws and statutes, that 'upon pretence the said offenders were punishable only by martial law, 'and by authority of such commissions as aforesaid: Which commis-'sions, and all other of like nature, are wholly and directly contrary to 'the said laws and statutes of this your realm:

The Petition. 25 Ed. 1. st. 1. c. 6.

X. They do therefore humbly pray your most excellent Majesty, That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no free-man, in any such manner as is before-mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, That the awards, doings, and proceedings, to the prejudice of your people in any of the premises shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom. *Qua quidem petitione lecta & plenius intellecta per dictum Dominum Regem taliter est responsum in pleno Parliamento*, viz. Soit droit fait comme est desiré.

[No. III.] 16 Charles I. c. 10.—An Act for the regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.

16 Charles I. c. 10.

Recital of Magna Charta and several statutes.

9 H. 3. st. 1. c. 29. 5 Ed. 3. c. 9. 3 H. 7. c. 1.

25 Ed. 3. st. 5. c. 4.

'WHEREAS by the Great Charter many times confirmed in Parliament, it is enacted, That no freeman shall be taken or imprisoned, or disseised of his freehold or liberties, or free customs, or be 'outlawed or exiled or otherwise destroyed, and that the King will not 'pass upon him, or condemn him, but by lawful judgment of his peers, 'or by the law of the land: And by another statute made in the fifth 'year of the reign of King *Edward* the Third, it is enacted, That no 'man shall be attached by any accusation, nor forejudged of life or limb, 'nor his lands, tenements, goods nor chattels seized into the King's 'hands, against the form of the great charter, and the law of the land: 'And by another statute made in the five and twentieth year of the reign of 'the same King *Edward* the Third, It is accorded, assented and established, 'That none shall be taken by petition or suggestion made to the King, or 'to his council, unless it be by indictment or presentment of good and law-'ful people of the same neighbourhood where such deeds be done, in 'due manner or by process made by writ original at the common law, 'and that none be put out of his franchise or freehold, unless he be duly

No. III. 16 Charles I. c. 10.

'brought in to answer, and forejudged of the same by the course of the 'law, and if any thing be done against the same, it shall be redressed 'and holden for none; And by another statute made in the eight and 'twentieth year of the reign of the same King *Edward* the Third, it is 'amongst other things enacted, That no man of what estate or condition 'soever he be, shall be put out of his lands or tenements, nor taken, nor 28 Ed. 3. c. 3. 'imprisoned, nor disinherited, without being brought in to answer by 'due process of law: And by another statute made in the two and forti- 'eth year of the reign of the said King *Edward* the Third, It is enacted, 42 Ed. 3. c. 3. 'That no man be put to answer, without presentment before justices, or 'matter of record, or by due process and writ original, according to the 'old law of the land, and if any thing be done to the contrary, it shall 'be void in law, and holden for error: And by another statute made in 'the six and thirtieth year of the same King *Edward* the Third, It is 36 Ed. 3. c. 15. 'amongst other things enacted, That all pleas which shall be pleaded in 'any courts before any the King's justices, or in his other places, or be- 'fore any of his other ministers, or in the courts and places of any other 'lords within the realm, shall be entered and enrolled in *Latin*: And 'whereas by the statute made in the third year of King *Henry* the 3 H. 7. c. 1. 'Seventh power is given to the Chancellor, the Lord Treasurer of *Eng- 'land* for the time being, and the Keeper of the King's Privy Seal, or 'two of them, calling unto them a bishop and a temporal lord of the 'King's most honourable council, and the two chief justices of the 'King's Bench and Common Pleas for the time being, or other two jus- 'tices in their absence, to proceed as in that Act is expressed, for the 'punishment of some particular offences therein mentioned: And by the 'statute made in the one and twentieth year of King *Henry* the Eighth, 21 H. 8. c. 20. 'the president of the council is associated to join with the Lord Chan- 'cellor and other judges in the said statute of the third of *Henry* the 'Seventh mentioned; but the said judges have not kept themselves to 'the points limited by the said statute, but have undertaken to punish 'where no law doth warrant, and to make decrees for things having no 'such authority, and to inflict heavier punishments than by any law is 'warranted.

'II. And forasmuch as all matters examinable or determinable before 'the said judges, or in the court commonly called the Star-Chamber, 'may have their proper remedy and redress, and their due punishment 'and correction, by the common law of the land, and in the ordinary 'course of justice elsewhere; and forasmuch as the reasons and motives 'inducing the erection and continuance of that court do now cease; 'and the proceedings, censures and decrees of that court, have by ex- 'perience been found to be an intolerable burthen to the subjects, and 'the means to introduce an arbitrary power and government; and for- 'asmuch as the council-table hath of late times assumed unto itself a 'power to intermeddle in civil causes and matters only of private inte- 'rest between party and party, and have adventured to determine of 'the estates and libertics of the subject, contrary to the law of the 'land and the rights and privileges of the subject, by which great and 'manifold mischiefs and inconveniences have arisen and happened, and 'much incertainty by means of such proceedings hath been conceived 'concerning men's rights and estates;' for settling whereof, and pre- venting the like in time to come,

All matters examinable in the Star Chamber, may be examinable and redressed by the common law.

III. Be it ordained and enacted by the authority of this present Parliament, That the said court commonly called the Star-Chamber, and all jurisdiction, power and authority belonging unto, or exercised in the same court, or by any the judges, officers or ministers thereof, be from the first day of *August* in the year of our Lord God, One thousand six hundred forty and one, clearly and absolutely dissolved, taken away and determined; and that from the said first day of *August* neither the Lord Chancellor, or Keeper of the Great Seal of *England*, the Lord Treasurer of *England*, the keeper of the King's Privy Seal, or president of the council, nor any Bishop, Temporal Lord, Privy Counsellor or Judge, or justice whatsoever, shall have any power or authority to hear,

Court of Star Chamber, and all its powers, dissolved.

No. III. 16 Charles I. c. 10.

examine or determine any matter or thing whatsoever, in the said court commonly called the Star-Chamber, or to make, pronounce or deliver any judgment, sentence, order or decree, or to do any judicial or ministerial Act in the said court: And that all and every Act and Acts of Parliament, and all and every article, clause and sentence in them, and every of them, by which any jurisdiction, power or authority is given, limited or appointed unto the said court commonly called the Star-Chamber, or unto all or any the judges, officers or ministers thereof, or for any proceedings to be had or made in the said court, or for any matter or thing to be drawn into question, examined, or determined there, shall for so much as concerneth the said court of Star-Chamber, and the power and authority thereby given unto it, be from the said first day of *August* repealed, and absolutely revoked and made void.

Like jurisdiction in several other courts repealed and taken away.

IV. And be it likewise enacted, That the like jurisdiction now used and exercised in the court before the president and council in the marches of *Wales*; and also in the court before the president and council established in the northern parts; and also in the court commonly called the court of the duchy of *Lancaster*, held before the chancellor and council of that court; and also in the Court of Exchequer of the county palatine of *Chester* held before the chamberlain and council of that court; the like jurisdiction being exercised there, shall from the said first day of *August*, One thousand six hundred forty and one, be also repealed and absolutely revoked and made void; any law, prescription, custom or usage, or the said statute made in the third year of King *Henry* the Seventh, or the statute made in the one and twentieth of *Henry* the Eighth, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding: And that from henceforth no court, council or place of judicature, shall be erected, ordained, constituted, or appointed within this realm of *England*, or dominion of *Wales*, which shall have, use or exercise the same or the like jurisdiction as is or hath been used, practised, or exercised in the said court of Star-Chamber.

3 H. 7. c. 1.
21 H. 8. c. 20.
No court or council to have the like jurisdiction.

The King or his Privy council shall not have jurisdiction over any man's estate.

V. Be it likewise declared and enacted by the authority of this present Parliament, That neither his Majesty, nor his Privy Council, have or ought to have any jurisdiction, power or authority, by *English* bill, petition, articles, libel, or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels of any the subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of the law.

Penalties upon great officers and others for the first offence.

VI. And be it further provided and enacted, That if any Lord Chancellor, or Keeper of the Great Seal of *England*, Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy Counsellor, judge or justice whatsoever, shall offend, or do any thing contrary to the purport, true intent and meaning of this law, then he or they shall for such offence forfeit the sum of five hundred pounds of lawful money of *England* unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgment thereupon, to be recorded in any court of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoin, protection, wager of law; aid prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted or allowed, nor any more than one imparlance; And if any person against whom any such judgment or recovery shall be had as aforesaid, shall after such judgment or recovery offend again in the same, then he or they for such offence shall forfeit the sum of one thousand pounds of lawful money of *England* unto any party aggrieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgment thereupon, to be recorded, in any court of Record at *Westminster*, by action of debt, bill, plaint, or information, in which no essoin, protection, wager of law, aid prayer, privilege, injunction, or order of restraint,

Second offence.

shall be in any wise prayed, granted, or allowed, nor any more than one imparlance: And if any person against whom any such second judgment or recovery shall be had as aforesaid, shall, after such judgment or recovery, offend again in the same kind, and shall be thereof duly convicted by indictment, information, or any other lawful way or means, that such person so convicted shall be from thenceforth disabled, and become, by virtue of this Act, incapable, *ipso facto*, to bear his and their said office and offices respectively; and shall be likewise disabled to make any gift, grant, conveyance, or other disposition of any of his lands, tenements, hereditaments, goods, or chattels, or to take any benefit of any gift, conveyance, or legacy to his own use.

Third offence.

VII. And every person so offending shall likewise forfeit and lose unto the party grieved, by any thing done contrary to the true intent and meaning of this law, his treble damages which he shall sustain and be put unto, by means or occasion of any such act or thing done, the same to be recovered in any of his Majesty's courts of Record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoin, protection, wager of law, aid prayer, privilege, injunction, or order of restraint, shall be in anywise prayed, granted or allowed, nor any more than one imparlance.

Treble damages to the party grieved.

VIII. And be it also provided and enacted, That if any person shall hereafter be committed, restrained of his liberty, or suffer imprisonment, by the order or decree of any such court of Star-Chamber, or other court aforesaid, now or at any time hereafter, having, or pretending to have, the same or like jurisdiction, power, or authority, to commit or imprison as aforesaid, or by the command or warrant of the King's Majesty, his heirs or successors, in their own person, or by the command or warrant of the council-board, or of any of the Lords or others of his Majesty's Privy Council; that in every case every person so committed, restrained of his liberty, or suffering imprisonment, upon demand or motion made by his council, or other employed by him for that purpose, unto the judges of the Court of King's Bench or Common Pleas, in open court, shall, without delay, upon any pretence whatsoever, for the ordinary fees usually paid for the same, have forthwith granted unto him a writ of *habeas corpus*, to be directed generally unto all and every sheriffs, gaoler, minister, officer, or other persons in whose custody the party committed or restrained shall be, and the sheriffs, gaoler, minister, officer, or other person in whose custody the party so committed or restrained shall be, shall, at the return of the said writ, and according to the command thereof, upon due and convenient notice thereof given unto him, at the charge of the party who requireth or procureth such writ, and upon security by his own bond given, to pay the charge of carrying back the prisoner, if he shall be remanded by the court to which he shall be brought, as in like cases hath been used, such charges of bringing up and carrying back the prisoner to be always ordered by the court, if any difference shall arise thereabout, bring, or cause to be brought, the body of the said party so committed or restrained unto and before the judges or justices of the said court from whence the said writ shall issue, in open court, and shall then likewise certify the true cause of such his detainer or imprisonment, and thereupon the court, within three court days after such return made and delivered in open court, shall proceed to examine and determine whether the cause of such commitment appearing upon the said return be just and legal, or not, and shall thereupon do what to justice shall appertain, either by delivering, bailing or remanding the prisoner: And if any thing shall be otherwise wilfully done, or omitted to be done, by any judge, justice, officer, or other person aforementioned, contrary to the direction and true meaning hereof, that then such person so offending shall forfeit to the party grieved his treble damages, to be recovered by such means, and in such manner as is formerly in this Act limited and appointed for the like penalty to be sued for and recovered.

Every person committed contrary to this Act shall have an Habeas Corpus.

Treble damages in default.

No. III. 16 Charles I. c. 10.

To what courts this Act shall extend.

IX. Provided always, and be it enacted, That this Act, and the several clauses therein contained, shall be taken and expounded to extend only to the court of Star-Chamber, and to the said courts holden before the president and council in the marches of *Wales*, and before the president and council in the northern parts, and also to the court commonly called the court of the Duchy of *Lancaster*, holden before the Chancellor and council of that court, and also in the Court of Exchequer of the county palatine of *Chester*, held before the chamberlain and council of that court, and to all courts of like jurisdiction to be hereafter erected, ordained, constituted, or appointed, as aforesaid; and to the warrants and directions of the council-board, and to the commitments, restraints, and imprisonments, of any person or persons made, commanded, or awarded, by the King's Majesty, his heirs or successors, in their own person, or by the Lords and others of the privy council, and every one of them.

Offenders against this Act shall be impleaded within two years after any offence.

X. And lastly provided, and be it enacted, That no person or persons shall be sued, impleaded, molested, or troubled, for any offence against this present Act, unless the party supposed to have so offended shall be sued or impleaded for the same within two years at the most after such time wherein the said offence shall be committed.

[No. IV.] 31 Charles II. c. 2.—An Act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas. (1)

31 Charles II. c. 2.

'WHEREAS great delays have been used by sheriffs, gaolers, and 'other officers, to whose custody any of the King's subjects have 'been committed for criminal or supposed criminal matters, in making 'returns of writs of *habeas corpus* to them directed, by standing out 'an *alias* and *pluries habeas corpus*, and sometimes more, and by other 'shifts to avoid their yielding obedience to such writs, contrary to their 'duty and the known laws of the land, whereby many of the King's 'subjects have been, and hereafter may be long detained in prison, in

(1) Of the passing of this important Act Bishop Burnet relates the following extraordinary anecdote; Vol. I. p. 485:—"It was carried by an odd artifice in the House of Lords. Lord Grey and Lord Norris were named to be the tellers. Lord Norris being a man subject to the vapours was not at all times attentive to what he was doing; so a very fat lord coming in, Lord Grey counted him for ten, as a jest at first; but seeing Lord Norris had not observed it, he went on with this mis-reckoning of ten: so it was reported to the house, and declared that they who were for the bill were the majority; though, indeed, it went on the other side: and by this means the bill passed."

Whatever doubt may be entertained of the truth of this anecdote, it may at least be taken for granted that such a story could not have become current unless there had been, in fact, a strong opposition to the measure. For the reasons of passing the Act, see 3 Bla. Com. 135.

The Act has been at various times suspended, with respect to the power of imprisonment of the crown, upon occasions of public alarm; such suspensions usually being for a very short period. The general title given to such temporary acts has been, "An Act to empower his Majesty to secure and detain such persons as his Majesty shall suspect are conspiring against his person and government." The following are Acts of this description: 1 W. & M. s. 1. ch. 7, 19; 7 & 8 W. III. c. 11; 6 Anne, c. 15; 7 Anne, c. 9; 1 Geo. I. ch. 8, 30; 17 Geo. II. c. 6; 19 Geo. II. c. 1; 34 Geo. III. c. 54; which was followed by subsequent Acts during the then existing war. See the discussion on the writ of *habeas corpus* by Lord Chief Justice Wilmot, in his Reports, p. 77; some parts of which have been superseded by the enactments in the following number.

The recent alteration of the law, although necessary to give effect to the spirit and principles of the former enactment, did not pass without considerable opposition; but the arguments against it seemed principally to consist in the usual topic of the dangers of innovation. The opposition was, in a previous session, attended with success; and the final adoption of the measure may seem as a lesson to those, whose attention is directed to beneficial alterations of the law, not to be discouraged by a temporary failure.

The liberty of the subject would be materially promoted by giving the judges a discretionary power to discharge from illegal commitments, by rule of court or order, without the necessity of the actual appearance of the party, which, in most cases, has no other effect than a great accumulation of expense, and the necessity of which often occasions a mutual failure of justice; as any person who has been in the habit of perusing the calendars of courts of quarter sessions will be easily convinced.

'such cases where by law they are bailable, to their great charges and 'vexation:'

No. IV. 31 Charles II. c. 2.

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority thereof, That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present Act, and that he will not make any escape by the way, make return of such writ; and bring or cause to be brought the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the great seal of *England* for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days after such delivery aforesaid, and not longer.

Writs of habeas corpus within three days after service to be returned, and the body brought, if within twenty miles, &c.

III. And to the intent that no sheriff, gaoler, or other officer may pretend ignorance of the import of any such writ; Be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the person that awards the same; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, (1) unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one in his or their behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the Exchequer of the degree of the coif; and the said Chancellor, Lord Keeper, justices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorised and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court whereof he shall then be one of the judges, to be directed to the officer or officers in

Such writs how to be marked.

Writs of habeas corpus, and the proceedings thereon in vacation time.

(1) Q. If a commitment by a justice of peace on conviction in a penalty under the excise laws is a commitment for a crime, so as to subject the gaoler to the penalties in sect. 5; Huntley *v.* Luscombe, 2 B. and P. 530.

No. IV. 31 Charles II. c. 2.

whose custody the party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such justice, baron, or any other justice or baron of the degree of the coif of any of the said courts; and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such justices, barons, or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the Court of King's Bench the term following, or at the next assizes, sessions or general gaol-delivery of and for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made; unless it shall appear unto the said Lord Chancellor or Lord Keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable. (1)

Persons neglecting two terms to pray a habeas corpus, shall have none in vacation time, in pursuance of this Act.

IV. Provided always, and be it enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation-time, in pursuance of this Act.

Officers how to be proceeded against for not obeying such writs.

V. And be it further enacted by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand (2) made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds; and for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action (4) of debt, suit, bill, plaint or information, in any of the King's courts at *Westminster*,

(1) It is the constant practice of the court, notwithstanding the warrant of commitment be defective, to remand the prisoners, if it appear, on reading the depositions, that there is a fair ground to authorize them; Rex *v.* Marks, 3 East. 157.

(2) Demand on the turnkey, the gaoler being accessible, is not sufficient to subject the gaoler to the penalty; Huntley *v.* Luscombe, 2 B. & P. 530.

(3) The plaintiff in such action is entitled to costs; Ward *v.* Snell, 1 H. B. 10.

wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by *non vult ulterius prosequi* or otherwise, shall be admitted or allowed, or any more than one imparlance; and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or persons within the said penalty for the second offence.

Persons set at large not to be recommitted but by order of court.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence; Be it enacted by the authority aforesaid, That no person or persons which shall be delivered or set at large upon any *habeas corpus*, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons shall knowingly contrary to this Act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Persons committed for treason or felony, shall be indicted the next term, or let to bail;

VII. Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of *oyer* and *terminer*, or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of *oyer* and *terminer*, or general gaol-delivery, after such commitment; it shall and may be lawful to and for the judges of the Court of King's Bench and justices of *oyer* and *terminer* or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions, or gaol-delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the King could not be produced the same term, sessions, or general gaol-delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or first day of the sessions of *oyer* and *terminer* and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of *oyer* and *terminer* or general gaol-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

and tried the term, &c. after or discharged.

VIII. Provided always, That nothing in this Act shall extend to discharge out of prison any person charged in debt or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

IX. Provided always, and be it enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers; unless it be by *Habeas Corpus* or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol; or where any person is sent by order of any judge of assize or justice of the peace, to any common workhouse or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; or in case of sudden fire or infection, or other necessity; and if any person or persons shall, after such commitment aforesaid, make out and sign, or counter-

No. IV. 31 Charles II. c. 2.

sign any warrant or warrants for such removal aforesaid, contrary to this Act; as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer or incur the pains and forfeitures in this Act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

The penalty for denying a Habeas Corpus.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; and if the said Lord Chancellor or Lord Keeper, or any judge or judges, baron or barons for the time being of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of *Habeas Corpus*, by this Act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds, to be recovered in manner aforesaid.

Habeas Corpus shall run in counties palatine and privileged places.

XI. And be it declared and enacted by the authority aforesaid, That an *Habeas Corpus* according to the true intent and meaning of this Act may be directed and run into any county palatine, the cinque ports, or other privileged places within the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, and the islands of *Jersey* or *Guernsey*; any law or usage to the contrary notwithstanding.

No subject shall be sent to foreign prisons.

XII. And for preventing illegal imprisonments in prisons beyond the seas; be it further enacted by the authority aforesaid, That no subject of this realm that now is, or hereafter shall be an inhabitant or resiant of this kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, shall or may be sent prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into parts, garrisons, islands or places beyond the seas, which are or at any time hereafter shall be within or without the dominions of his Majesty, his heirs or successors; and that every such imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain by virtue of this Act an action or actions of false imprisonment in any of his Majesty's Courts of Record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this Act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them; and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given, shall not be less than five hundred pounds; in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in open court, as shall be thought in justice necessary, for special cause to be expressed in the said rule; and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer or transportation, or shall so commit, detain, imprison or transport any person or persons contrary to this Act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or any of the islands, territories or dominions thereunto belonging; and shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the statute of provision and *præmunire* made in the sixteenth year of King *Richard* the Second;

The penalty.

16 R. 2, c. 5.

and be incapable of any pardon from the King, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

XIII. Provided always, That nothing in this Act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

Persons receiving earnest upon contracts to be transported, excepted.

XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this Act, or any thing therein contained to the contrary notwithstanding.

Persons convictedof felony, and praying transportation, excepted.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken, to extend to the imprisonment of any person before the first day of *June* One thousand six hundred seventy and nine, or to any thing advised, procured, or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

Imprisonments before the first of June, 1679, excepted.

XVI. Provided also, That if any person or persons at any time resiant in this realm, shall have committed any capital offence in *Scotland* or *Ireland*, or any of the islands, or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this Act; any thing herein contained to the contrary notwithstanding.

Offenders may be sent to be tried where their offences were committed.

XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this Act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

Prosecutions for offences within what time to be made.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there, be it enacted, That after the assizes proclaimed for the county where the prisoner is detained, no person shall be removed from the common gaol upon any *Habeas Corpus* granted in pursuance of this Act, but upon any such *Habeas Corpus* shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

After the assizesproclaimed, no prisoner to be removed,but beforethe judge of assize.

XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained, may have his or her *Habeas Corpus* according to the direction and intention of this Act.

XX. And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter of law to have discharged the said defendant or defendants against the said information, suit, or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alleged the same matter in bar or discharge of such information, suit or action.

In suits for offence against this law, the defendants may plead the general issue, &c.

'XXI. And because many times persons charged with petty treason 'or felony, or as accessaries thereunto, are committed upon suspicion 'only, whereupon they are bailable, or not, according as the circum-'stances making out that suspicion are more or less weighty, which are

No. IV. 31 Charles II. c. 2.

'best known to the justices of peace that committed the persons, and 'have the examinations before them, or to other justices of the peace in 'the county;' be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessary before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this Act, or in any other manner than they might have been before the making of this Act.

Persons committed as accessaries before to petty treason or felony, shall not be removed or bailed otherwise than before this Act made.

[No. V.] 56 George III. c. 100.—An Act for more effectually securing the Liberty of the Subject.—[1st *July* 1816.]

56 George III. c. 100.

WHEREAS the writ of *Habeas Corpus* hath been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof: And whereas extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public: And whereas the provisions made by an Act passed in *England* in the thirty-first year of King *Charles* the Second, intituled, "An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas," and also by an Act passed in *Ireland* in the twenty-first and twenty-second years of his present Majesty, intituled, "An Act for better securing the Liberty of the Subject," only extend to cases of commitment or detainer for criminal or supposed criminal matter; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick upon Tweed*, or the isles of *Jersey*, *Guernsey*, or *Man*, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other; and where any person shall be so confined in *Ireland*, it shall and may be lawful for any one of the barons of the Exchequer, or of the justices of one bench or the other in *Ireland*; and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in vacation time, a writ of *habeas corpus ad subjiciendum*, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued.

31 Car. 2. c. 2.

Irish Act, 21 and 22 Geo. 3.

Judges to issue in vacation, writs of habeas corpus returnable immediately, in cases other than for criminal matter, or for debt.

II. And be it further enacted by the authority aforesaid, That if the person or persons to whom any writ of *Habeas Corpus* shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained, with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the

Non-obedience to such writ, to be a contempt of court, and punishable accordingly.

said writ, to issue a warrant under his hand and seal, for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing, to the jail or prison of the court of which such justice or baron shall be a judge, there to remain, until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged: Provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court: Provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last-mentioned court shall have like power to award such writs as the respective Courts of King's Bench and Common Pleas in each of the said countries now have, in term, but so late that, in the judgment of the court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in *Ireland*, before any justice or baron of the same court, who shall and may proceed thereupon, in such manner as by this Act is directed, concerning writs issuing in and made returnable during the vacation.

Judges to make writs of Habeas Corpus, issued in vacation, returnable in court in the next term.

Courts to make writs issued in term, returnable in vacation.

III. And be it further enacted by the authority aforesaid, That in all cases provided for by this Act, although the return to any writ of *Habeas Corpus* shall be good and sufficient in law, it shall be lawful for the justice or baron before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation (in cases where an affirmation is allowed by law) and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return, or any of them, be true or not; in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron, upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits, and affirmations; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law, affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party.

Judges to inquire into the truth of facts contained in return.

Judge to bail on recognizance to appear in term, &c.

No. V. 56 Geo. III. c. 100.

IV. And be it further enacted by the authority aforesaid, That the like proceeding may be had in the court for controverting the truth of the return to any such writ of *Habeas Corpus*, awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein.

Court may controvert the truth of the return.

Writ may run into counties palatine, cinque ports, and privileged places, &c.

V. And be it declared and enacted by the authority aforesaid, That a writ of *Habeas Corpus*, according to the true intent and meaning of this Act, may be directed and run into any county palatine or cinque port, or any other privileged place within that part of *Great Britain* called *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, and the isles of *Jersey*, *Guernsey*, and *Man*, respectively; and also in any port, harbour, road, creek, or bay, upon the coast of *England* or *Wales*, although the same should lie out of the body of any county; and if such writ shall issue in *Ireland*, the same may be directed and run into any port, harbour, road, creek, or bay, although the same should not be in the body of any county; any law or usage to the contrary in any wise notwithstanding.

Process of contempt may be awarded in vacation against persons disobeying writs of Habeas Corpus in cases within stat. 31 Car. 2. c. 2.

VI. And be it further enacted by the authority aforesaid, That the several provisions made in this Act, touching the making writs of *Habeas Corpus*, issuing in time of vacation, returnable into the said courts, or for making such writs awarded in term time, returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ; and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of *Habeas Corpus* awarded in pursuance of the said Act, passed in *England* in the thirty-first year of the reign of King *Charles* the Second, or of the said Act passed in *Ireland* in the twenty-first and twenty-second years of his present Majesty, and hereinbefore recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been hereinbefore specially named and provided for respectively.

PART IV.

CLASS XVIII.

Real Actions.

[I have thought it desirable to notice the Titles of the several Acts upon this subject, although most of them may be regarded as completely obsolete, and on that Account I have not chosen to swell the Work by inserting the Acts at large. It will appear from the List exhibited, how great an Importance was attached to the Subject in the early Stages of our Legislation. At present it meets with every discouragement, and the Court will give no assistance in case of any accidental Error in the Proceedings of the Demandant.]

[No. I.] 20 Henry III. (Merton) c. 1.—A Woman shall recover Damages in a Writ of Dower.

[Inserted *ante*, Part II. Class I. No. 2.]

[No. II.] 20 Henry III. c. 3.—Enquiry and Punishment of Redisseisin.

[No. III.] 51 Henry III. st. 2.—Concerning general Days in Bank in Real Actions.

[No. IV.] 51 Henry III. st. 3.—Concerning general Days in a Writ of Dower.

[No. V.] 52 Henry III. c. 7.—Process in *Communi Custodia*, Ward by reason of Ward.

[No. VI.] 52 Henry III. c. 8.—The Punishment of those which commit Redisseisin.

[No. VII.] 52 Henry III. c. 12.—Days given in Dower, Assise of *Darraine Presentment*, and *Quare Impedit*.

52 Henry III. c. 12.

Process in *quare impedit*.

'IN a plea of dower, that is called *unde nihil habet*, from henceforth four days shall be given in the year at the least, and more if conveniently it may be, so that they shall have five or six days at the least in the year. In assises of *darraine presentment*, and in a plea of *quare impedit*, of churches vacant, days shall be given from fifteen to fifteen, or from three weeks to three weeks, as the place shall hap to be near, or far. And in a plea of *quare impedit*, if the disturber come not at the first day that he is summoned, nor cast no essoign, then he shall be attached at another day; at which day if he come not, nor cast no essoign, he shall be distrained by the great distress above given; and if he come not then, by his default a writ shall go to the bishop of the same place, that the claim of the disturber for that time shall not be prejudicial to the plaintiff; saving to the disturber his right at another

No. VII. 52 Hen. III. c. 12.

'time, when he shall sue therefore. The same law, as to the making of 'attachments, shall from henceforth be observed in all writs where at- 'tachments lie, as in making distresses, so that the second attachment 'shall be made by better pledges, and afterwards the last distress.'

[No. VIII.] 52 Henry III. c. 26.—What Day shall be given to him that is vouched to Warranty.

[No. IX.] 52 Henry III. c. 29.—In what Case a Writ of *Entrie sur disseisin* in the *Post* doth lie.

52 Henry III. c. 29.

'IT is provided also, That if those alienations (whereupon a writ of 'entry was wont to be granted) hap to be made in so many degrees, 'that by reason thereof the same writ cannot be made in the form be- 'foretimes used, the plaintiffs shall have a writ to recover their seisin, 'without making mention of the degrees, into whose hands soever the 'same shall happen to come by such alienations, and that by an ori- 'ginal writ to be provided therefore by the council of our Lord the 'King.'

[No. X.] 3 Edward I. (Westminster 1.) c. 24.—The Remedy if an Officer of the King do disseise any.

[No. XI.] 3 Edward I. c. 40.—Voucher to Warranty, and Counterpleading of Voucher.

[No. XII.] 3 Edward I. c. 41.—The Champion's Oath in a Writ of Right.

3 Edward I. c. 41.

'TOUCHING the oaths of champions, it is thus provided, because it 'seldom happened but that the champion of the defendant is for- 'sworn, in that he sweareth, that he or his father saw the seisine of his 'Lord, or his ancestor, and that his father commanded him to dereign 'that right; that from henceforth the champions of the demandant 'shall not be compelled so to swear: Nevertheless his oath shall be 'kept in all other points.'

[No. XIII.] 3 Edward I. c. 42.—Certain Actions wherein after Appearance the Tenant shall not be essoigned.

[No. XIV.] 3 Edward I. c. 43.—There shall be no Fourcher by Essoign.

[No. XV.] 3 Edward I. c. 44.—In what Case Essoign *ultra mare* shall not be allowed.

[No. XVI.] 3 Edward I. c. 47.—In what Case the Nonage of the Heir of the Disseisor or Disseisee shall not prejudice.

[No. XVII.] 3 Edward I. c. 48.—The Remedy where a Guardian maketh a Feoffment of his Ward's Land. Suit by *Prochein Amy*. No. XVII. 3 Edward I. c. 48.

[No. XVIII.] 3 Edward I. c. 49.—The Tenant's Plea in a Writ of Dower.

'IN a writ of dower, called *unde nihil habet*, the writ shall not abate by the exception of the tenant, because she hath received her dower of another man before her writ purchased, unless he can shew that she hath received part of her dower of himself, and in the same town, before the writ purchased.' 3 Edward I. c. 49.

[No. XIX.] 3 Edward I. c. 51.—Assizes and *Darrain Presentments* at what Time taken.

[No. XX.] 6 Edward I. (Gloucester) c. 1.—Several Actions wherein Damages shall be recovered.

[Inserted ante, Class II. No. 1.]

[No. XXI.] 6 Edward I. c. 2.—In what Case Nonage of the Plaintiff shall not stay an Enquest.

'IF a child within age be holden from his heritage after the death of his cosin, grandfather, or great grandfather, whereby he is driven to his writ, and his adversary cometh into the court, and for his answer allegeth a feoffment, or pleadeth some other thing, whereby the justices award an enquest, there whereas the enquest was deferred unto the full age of the infant, now the enquest shall pass as well as if he were of full age.' 6 Edward I. c. 2.

[No. XXII.] 6 Edward I. c. 4.—In what Case a *Cessavit* is maintainable against a Tenant in Fee-farm.

[No. XXIII.] 6 Edward I. c. 5.—Several Tenants against whom an Action of Waste is maintainable.

[Inserted Part II. Class I. No. 7.]

[No. XXIV.] 6 Edward I. c. 6.—Where divers Heirs shall have one Assize of Mortdauncestor.

'IT is provided also, That if a man die, having many heirs, of whom one his son or daughter, brother or sister, nephew or niece, and the other be of a further degree, all the heirs shall recover from henceforth by a writ of *Mortdauncestor*.' 6 Edward I. c. 6.

[No. XXV.] 6 Edward I. c. 7.—A Writ of Entry *in casu proviso*, upon a Woman's Alienation of Dower.

'ALSO if a woman sell or give in fee, or for term of life, the land that she holdeth in dower; it is ordained, That the heir, or other to whom the land ought to revert after the death of such 6 Edward I. c. 7.

No. XXV. 6 Edward I. c. 7.

'woman, shall have present recovery to demand the land by a writ of 'entry made thereof in the Chancery.'

[No. XXVI.] 6 Edward I. c. 10.—The Husband and Wife being impleaded, shall not fourch by Essoign.

[No. XXVII.] 6 Edward I. c. 11.—A feigned Recovery against him in the Reversion, to make the Termor lose his Term.

[No. XXVIII.] 6 Edward I. c. 12.—One impleaded in *London* voucheth Foreign Warranty.

[No. XXIX.] 6 Edward I. c. 13.—No Waste shall be made hanging a Suit for the Land.

[No. XXX.] 9 Edward I.—A Correction of the Twelfth Chapter of the Statute of *Gloucester*, touching calling Foreigners to Warranty in *London*.

[No. XXXI.] 13 Edward I. (Westminster 2) c. 1.—In Gifts in Tail the Donor's Will shall be observed. The Form of a *Formedon*.

[Inserted Part II. Class 1. No. 8.]

[No. XXXII.] 13 Edward I. c. 3.—A *Cui in vita* for the Wife. Where a Wife, or he in Reversion, shall be received.

13 Edward I. c. 3. A *cui in vita* for the wife, where her deceased husband lost by default.

"IN case when a man doth lose by default the land which was the "right of his wife, it was very hard that the wife, after the death of "her husband, had none other recovery but by a writ of right;" 'where-'fore our Lord the King hath ordained, That a woman, after the death 'of her husband, shall recover by a writ of entry (whereto she could 'not disagree during his life) which shall be pleaded in form under-'written. If the tenant do except against the demand of the wife, that 'he entered by judgment, and it be found that his entry was by default, 'whereto the tenant of necessity must make answer, if it be demanded 'of him, then he shall be compelled to make further answer, and to 'shew his right according to the form of the writ that he purchased 'before against the husband and the wife. And if he can verify that he 'hath right in the land demanded, the woman shall gain nothing 'by her writ; which thing if he cannot shew, the woman shall recover 'the land in demand; this being observed, that if the husband absent 'himself, and will not defend his wife's right, or against his wife's con-'sent will render the land, if the wife do come before judgment, ready 'to answer the demandant, and to defend her right, the wife shall be 'admitted. Likewise if tenant in dower, tenant by the law of the land, 'or otherwise for term of life, or by gift, where the reversion is re-'versed, do make default, or will give up; the heirs, and they unto 'whom the reversion belongeth, shall be admitted to their answer if

When the writ shall be received upon the husband's default.

'they come before judgment; and if upon default, or surrender, 'judgment hap to be given, then the heirs, or they unto whom the 'reversion belongeth after the death of such tenants, shall have their 'recovery by a writ of entry, in which like process shall be observed as 'is aforesaid, in case where the husband loseth his wife's land by default. 'And so in the cases aforesaid two actions do concur, one between the 'demandant and tenant, and another between the tenant shewing his 'right, and the demandant.'

No. XXXII. 13 Edward I. c. 3

The receipt of him in the reversion.

[No. XXXIII.] 13 Edward I. st. 1. c. 4.—Where the Wife shall be endowable of Lands recovered against her Husband. Where the Heir may avoid a Dower recovered. A Remedy for particular Tenants losing by Default.

13 Edward I. st. 1. c. 4.

The wife shall be endowable, though the land be recovered against her husband by covin, or by default.

'IN case where the husband, being impleaded for land, giveth up the 'land demanded unto his adversary by covin; after the death of the 'husband, the justices shall award the wife her dower, if it be demanded 'by writ. But in case where the husband loseth the land in demand by 'default, if the wife after the death of her husband, demandeth her 'dower, it hath been proved, that some justices have awarded unto 'the woman her dower notwithstanding the default which her husband, 'made, other justices being of the contrary opinion, and judging other-'wise. To the intent that from henceforth such ambiguity shall be 'taken away, it is thus ordained in certain, that in both cases the woman 'demanding her dower shall be heard. And if it be alleged against 'her, that her husband lost the land, whereof the dower is demanded by 'judgment, whereby she ought not to have dower, and then it be in-'quired by what judgment, and it be found that it was by default, where-'unto the tenant must answer; then it behoveth the tenant to answer 'further, and to shew that he had right, and hath in the foresaid land, 'according to the form of the writ that the tenant before purchased 'against the husband, And if he can shew that the husband of such 'wife had no right in the lands nor any other but he that holdeth them, 'the tenant shall go quit, and the wife shall recover nothing of her 'dower; which thing if he cannot shew, the wife shall recover her dower.

A remedy for tenants for life, &c. which do lose their land by default.

'And so in these cases, and in certain other following, that is to say, 'When the wife being endowed loseth her dower by default, and tenants 'in free marriage, by the law of *England*, or for term of life or in fee-'tail, divers actions do concur for such tenants, when they must demand 'their land lost by default: And when it is come to that point, that the 'tenants must be compelled to shew their right, they cannot make 'answer without them to whom the reversion of right belongeth; there-'fore it is granted unto them to vouch to warranty, as if they were 'tenants, if they have a warranty. And when the warrantor hath war-'ranted, the plea shall pass between him that is seised and the warrantor, 'according to the tenor of the writ that the tenant purchased there, and by 'which he recovered by default; and so from many actions at length 'they shall resort to one judgment, which is this, That the demandants 'shall recover their demand, or the tenants shall go quit. And if the 'action of such a tenant, which is compelled to shew his right, be 'moved by a writ of right, though that the great assize or battail 'cannot be joined by the words accustomed, yet it shall be joined by 'words convenient; for when the tenant, in that he sheweth his right 'which belongeth to him by the writ that he before purchased, instead 'of a demandant, the warrantor may well defend the right of the te-'nant, which is accounted in place of the demandant, as before is said, 'and offer to defend the seisin of his ancestors by the body of his free-'man, or put himself in the great assize, and pray recognizance to be 'made, whether he hath more right to the land in demand, or else the 'party before named. Or otherwise the great assize may be joined 'thus, *talis defendit jus, &c.* and so the warrantor may defend the right,

The particular tenants may vouch him in the reversion.

No. XXXIII. 13 Edward I. st. 3. c. 4.

The heir avoideth a woman of her dower recovered against his guardian.

A woman's dower recovered against her by default.

'and knowledge the seisin of his ancestor, and put himself in the great 'assize, &c. and pray recognizance to be made whether he hath more 'right in the foresaid land, as in that whereof he enfeoffed such a man, 'or that such a one released and quit claimed, &c. or else the foresaid 'party, &c. And where sometime it chanceth that a woman not having 'right to demand dower, the heir being within age, doth purchase a writ of 'dower against a guardian, and the guardian endoweth the woman by fa'vour, or maketh default, or by collusion defendeth the plea so faintly, 'whereby the woman is awarded her dower in prejudice of the heir; it is 'provided, That the heir, when he cometh to full age, shall have an action 'to demand the seisin of his ancestor against such woman, like as he 'should have against any other deforcer; yet so, that the woman shall 'have her exception saved against the demandant, to shew that she had 'right to her dower, which if she can shew, she shall go quit and re'tain her dower, and the heir shall be grievously amerced, according 'to the discretion of the justices; and if not, the heir shall recover 'his demand, &c. In like manner the woman shall be aided, if the heir 'or any other do implead her for her dower, or if she lose her dower by 'default, in which case the default shall not be so prejudicial to her, 'but that she shall recover her dower, if she have right thereto, and she 'shall have this writ:'

IL Præcipe A. quod juste, &c. reddat B. quæ fuit uxor F. tantam terram cum pertinentiis in C. quam clamat esse rationabilem dotem suam, vel de rationabili dote sua, et quod prædictus A. ei deforceat, &c. 'And to this writ the tenant shall have his exception, to shew 'that she had no right to be endowed; which if he can verify, he shall 'go quit; if not, the woman shall recover the land, whereof she was 'endowed before. And whereas before time, if a man had lost his 'land by default, he had none other recovery than by a writ of right, 'which was not maintainable by any that could not claim of mere right, 'as tenants for term of life, in free marriage, or in tail, in which es'tates a reversion is reserved; it is provided, That from henceforth 'their default shall not be so prejudicial, but that they may recover 'their estate by another writ than by a writ of right, if they have 'right. For land in free marriage, lost by default, such a writ shall 'be made:'

Quod ei deforceat for tenant in frank-marriage.

Præcipe A. quod juste, &c. reddat B. manerium de D. cum pertinentiis, quod clamat esse jus et maritagium suum, et quod A. ei injuste deforceat.

For tenant for life, or in tail.

'Likewise of land for term of life, lost by default, this writ shall be made:'

Præcipe A. quod juste, et sine dilatione, &c. reddat B. manerium de D. cum pertinentiis, quod clamat tenere ad terminum vitæ suæ, et quod predictus A. ei deforceat.

Likewise,

Quod clamat tenere sibi, et hæredibus de corpore suo legitime procreatis, et quod predictus A. ei deforceat.

[No. XXXIV.] 13 Edward I. c. 5.—Remedies to Redress Usurpations of Advowsons of Churches, &c.

13 Edward I. c. 5.

Three original writs of advowson.

"WHEREAS of advowsons of churches there be but three original "writs, that is to say, one writ of right, and two of possession, "which be *darrien presentment*, and *quare impedit*; and hitherto it hath "been used in the realm, that when any having no right to present, "had presented to any church, whose clerk was admitted, he that was "very patron could not recover his advowson, but only by a writ of "right, which should be tried by battail or by great assize, whereby "heirs within age, by fraud, or else by negligence of their wardens, "and heirs both of great and mean estate, by negligence or fraud of "tenants by the courtesie, women tenants in dower, or otherwise, for

No. XXXIV. 13 Edward I. c. 5.

" term of life, or for years, or in fee-tail, were many times disherited " of their advowsons, or at least (which was the better for them) were " driven to their writ of right, in which case hitherto they were utterly " disinherited;" ' it is provided, That such such presentments shall not ' be so prejudicial to the right heirs, or to them unto whom such ad- ' vowsons ought to revert after the death of any persons: For as often ' as any, having no right, doth present during the time that such heirs ' are in ward, or during the estates of tenants in dower, by the cour- ' tesie, or otherwise for term of life, or of years, or in tail; at the ' next avoidance, when the heir is come to full age, or when after the ' death of the tenants before named the advowson shall revert unto the ' heir being of full age, he shall have such action by writ of advowson ' possessorie, as the last ancestor of such an heir should have had at the ' last avoidance happening in his time, being of full age before his death, ' or before the demise was made for term of life, or in fee-tail, as be- ' fore is said. The same shall be observed in presentments made unto ' churches, being of the inheritance of wives, what time they shall be ' under the power of their husbands, which must be aided by this esta- ' tute by the remedy aforesaid. Also religious men, as bishops, arch- ' deacons, parsons of churches, and other spiritual men, shall be aided ' by this estatute, in case any having no right to present do present ' unto churches belonging to prelacies, spiritual dignities, parsonages, ' or to houses of religion, what time such houses, prelacies, spiritual ' dignities, or parsonages be vacant.

Usurpation of churches during particular estates shall not prejudice them in the reversion.

Presentations to churches of women during their coverture.

Churches of religious persons.

' II. Neither shall this Act be so largely understanden, that such ' persons, for whose remedy this statute was ordained, shall have the ' recovery aforesaid, surmising that guardians of heirs, tenants in tail, ' by the courtesie, tenants in dower, for term of life, or for years, or ' husbands, faintly have defended pleas moved by them, or against ' them: because the judgments given in the King's court shall not be ' adnulled by this statute, the judgment shall stand in his force, until ' it be reversed in the court of the King as erroneous, if errour be ' found; or by assize of *darrein presentment*, or by enquest by a writ ' of *quare impedit*, if it be passed, or be adnulled by attaint, or certifi- ' cation, which shall be freely granted. And from henceforth one ' form of pleading shall be observed among justices in writs of *darrein* ' *presentment* and *quare impedit*, in this respect, if the defendant alleg- ' eth plenarty of the church of his own presentation, the plea shall not ' fail by reason of the plenarty; so that the writ be purchased within ' six months, though he cannot recover his presentation within the six ' months. And sometimes when an agreement is made between many ' claiming one advowson, and inrolled before the justices in the roll, ' or by fine, in this form that one shall present the first time, and at ' the next avoidance another, and the third time another; and so of ' many, in case there be many. And when one hath presented, and ' had his presentation, which he ought to have according to the ' form of their agreement and fine, and at the next avoidance he to ' whom the second presentation belongeth, is disturbed by any that ' was party to the said fine, or by some other in his stead; it is pro- ' vided, That from henceforth they that be so disturbed shall have no ' need to sue a *quare impedit*, but shall resort to the roll or fine; and if ' the said concord or agreement be found in the roll or fine, then the ' sheriff shall be commanded, that he give knowledge unto the dis- ' turber, that he be ready at some short day, containing the space of ' fifteen days, or three weeks (as the place happeneth to be near or far) ' for to shew if he can allege any thing, wherefore the party that is dis- ' turbed ought not to present: And if he come not, or peradventure doth ' come, and can allege nothing to bar the party of his presentation, by ' reason of any deed made or written* since the fine was made or in- ' rolled, he shall recover his presentation with his damages. And where ' it chanceth that after the death of the ancestor of him that presented ' his clerk unto a church, the same advowson is assigned in dower to ' any woman, or to tenant by the curtesie, which do present, and after

Judgments given shall not be reversed but by writ of error or attaint.

The defendant pleadeth plenarty of his own presentation.

Presentations to a church by composition.

The remedy for a disturbance after a particular estate ended.

*Any thing done since, &c.

No. XXXIV. 13 Edward I. c. 5.

'the death of such tenants the very heir is disturbed to present when 'the church is void, it is provided, That from henceforth it shall be in 'the election of the party disturbed whether he will sue a writ of *quare* 'impedit, or of *darrein presentment*. The same shall be observed in 'advowsons demised for term of life, or years, or in fee-tail.

Damages in quare impedit and darrein presentment.

'III. And from henceforth in writs of *quare impedit* and *darrein pre-* 'sentment, damages shall be awarded, that is to wit, If the time of six 'months pass by the disturbance of any, so that the bishop do confer 'to the church, and the very patron loseth his presentation for that 'time, damages shall be awarded for two years' value of the church. 'And if the six months be not passed, but the presentment be deraigned 'within the said time, then damages shall be awarded to the half year's 'value of the church; and if the disturber have not whereof he may 'recompense damages, in case where the bishop conferreth by lapse of 'time, he shall be punished by two years' imprisonment; and if the ad- 'vowson be deraigned within the half year, yet the disturber shall be 'punished by the imprisonment of half a year.

Quare impedit of prebends, vicarages, hospitals, &c.

'IV. And from henceforth writs shall be granted for chapels, pre- 'bends, vicarages, hospitals, abbeys, priories, and other houses which 'be of the advowsons of other men, that have not been used to be 'granted before.

Disturbance by indicavit.

And when the parson of any church is disturbed to 'demand tithes in the next parish by a writ of *indicavit*, the patron of 'the parson so disturbed shall have a writ to demand the advowson of 'the tithes being in demand; and when it is deraigned, then shall the 'plea pass in the court Christian, as far forth as it is deraigned in the 'King's court.

Usurpation by one co-parcener upon another.

'V. When an advowson descendeth unto parceners, though one pre- 'sent twice, and usurpeth upon his co-heir, yet he that was negligent 'shall not be clearly barred, but another time shall have his turn to pre- 'sent when it falleth.'

[No. XXXV.] 13 Edward I. c. 6.—The Penalty if a Tenant impleaded voucheth, and the Vouchee denieth his Warranty.

[No. XXXVI.] 13 Edward I. c. 7.—Admeasurement of Dower for the Guardian and the Heir, and the Process therein.

[No. XXXVII.] 13 Edward I. c. 9.—In what case the Writ of Mesne is to be pursued.

[No. XXXVIII.] 13 Edward I. c. 14.—The Process in an Action of Waste. A Writ to enquire of Waste.

13 Edward I. c. 14.

"WHEREAS for waste done in the inheritance of any person, by guar- "dians, tenants in dower, tenants by the courtesie of *England*, or "otherwise for term of life, or years, a writ of prohibition of waste hath "been used to be granted, by which writs many were deceived, thinking "that such as had done the waste should not need to answer but only "for waste done after the prohibition to them directed;" 'our Lord the 'King, to remove from henceforth this error, hath ordained, That of 'all manner of waste done to the damage of any person, there shall 'from henceforth be no writ of prohibition awarded, but a writ of 'summons, so that he of whom complaint is shall answer for waste

The process in an action of waste.

'done at any time; and if he come not after the summons, he shall 'be attached, and after the attachment he shall be distrained; and if 'he come not after the distress, the sheriff shall be commanded that 'in proper person he shall take with him twelve, &c. and shall go to 'the place wasted, and shall enquire of the waste done, and shall re-'turn an inquest, and after the inquest returned, they shall pass unto 'judgment, like as it is contained in the statute of *Gloucester*.'

No. XXXVIII. 13 Edward I. c. 14. A writ to enquire of waste.

[No. XXXIX.] 13 Edward I. c. 17.—In what Case Essoign *De malo lecti* doth lie, and where not.

[No. XL.] 13 Edward I. c. 20.—The Tenant's Answer in a Writ of *Cosinage*, *Aiel* and *Besaiel*.

[No. XLI.] 13 Edward I. c. 21.—A *Cessavit* by the chief Lord against his Freehold Tenant.

[No. XLII.] 13 Edward I. c. 22.—Waste maintainable by one Tenant in common against another.

[Inserted Part II. Class IV. No. 1.]

[No. XLIII.] 13 Edward I. c. 24.—A Writ of Nuisance of a House, &c. levied and aliened to another. A *Quod permittat* and *Juris utrum* for a Parson of a Church. In like Cases like Writs be grantable.

[Inserted Part IV. Class III. No. 3.]

[No. XLIV.] 13 Edward I. c. 25.—Of what Things an Assise shall lie. Certificate of Assise. Attachment in an assise.

[No. XLV.] 13 Edward I. c. 26.—Who may bring a Writ of Redisseisin, and the Punishment of the Offender therein.

[No. XLVI.] 13 Edward I. c. 27.—Essoign after Inquest, but none after Day given *Prece Partium*.

[No. XLVII.] 13 Edward I. c. 28.—In certain Actions, after Appearance there shall be no Essoign.

[No. XLVIII.] 13 Edward I. c. 32.—Mortmain by Recovery of Land by Default.

[Inserted Part II. Class V. No. 3.

No. XLIX. 13 Edward I. c. 35.

[No. XLIX.] 13 Edward I. c. 35.—In what cases do lie a Writ of Ravishment of Ward, *Communi Custodia, Ejectione, &c.*

[No. L.] 13 Edward I. c. 40.—A Woman's suit shall not be deferred by the Minority of the Heir.

[No. LI.] 13 Edward I. c. 48.—In what Cases the View of Land is grantable, and what not.

13 Edward I. c. 48.

'FOR view of land it is ordained and provided, That from henceforth 'view shall not be granted but in case when view of land is neces- 'sary; As if one lose land by default, and he that loseth, moveth a writ 'to demand the same land. And in case when one by an exception dila- 'tory abateth a writ after the view of the land, as by non-tenure, or 'misnaming of the town, or such like, if he purchase another writ, in 'this case, and in the case before mentioned, from henceforth the view 'shall not be granted, if he had view in the first writs. In a writ of 'dower, where the dower in demand is of land that the husband alieued 'to the tenant or his ancestors, where the tenant ought not to be ignorant 'what land the husband did aliene to him or his ancestor, though the 'husband died not seised, yet from henceforth view shall not be granted 'to the tenant. In a writ of entre also, that is abated because the de- 'mandant misnamed the entry, if the demandant purchase another writ 'of entre, if the tenant had view in the first writ, he shall not have it in 'the second. In all writs also where lands be demanded by reason of a 'lease made by the demandant, or his ancestor, unto the tenant, and 'not to his ancestor, as that which he leased to him, being within age, 'not whole of mind, being in prison, and such like, view shall not be 'granted hereafter; but if the demise were made to his ancestor, the 'view shall lie as it hath done before.'

[No. LII.] 20 Edward I. stat. 1.—In a Plea of Land the Tenant voucheth, and the Demandant counterpleadeth.

20 Edward I. stat. 1.

Voucher.

Vouched.

"WHEREAS the tenant impleaded in a plea of land or tenement "heretofore had vouched to warranty, and thereupon the de- "mandant would aver, that neither he that is vouched, nor any of his "ancestors (since the time that the ancestor of the demandant was "seised) was in possession of the said lands, neither in demean nor in "service, if the party vouched were present, and would warrantise the "land freely unto the tenant, such averment of the demandant hath not "been used to be admitted, unless the party vouched had been absent, "and that by reason of a certain statute of the King lately made amongst "other statutes of *West.* 1.

3 Ed. 1. c. 40.

In plea of land, the tenant voucheth one present, and the demandant counterplead- eth the voucher.

"II. Wherefore our Lord the King, considering the fraud, deceit, and "malice, and also his own damage, and disherison of his crown, that "in the said case hath many times happened in this court, and daily "doth, whereas some holding of the King in chief by a whole barony, "in a plea hanging before the justices of the bench, upon their demand "do vouch particularly, base persons unknown and strangers (which "they will bring forth) and of whom neither they nor their ancestors "had ever any thing in the lands that they warranted, nor in any other "lands or tenements within this realm, neither in demean nor in service, "as hath been testified by divers of the King's faithful subjects; so that "by such cautel, fraud, and malice, the same tenants, holding by an

No. LII. 20 Edward I. stat. 1.

" entire barony, do defraud the King of the amerciament that they " should incur, if the demandant should recover against them.

" III. And likewise when such base persons have warranted, that is to " wit, every one for his portion that he ought to warrant, he may defend " himself by the body of his servant procured and hired by them that " hold baronies, and so upon one writ and one demand there were two " or three wagers of battail, the which was hard and perilous example " for poor men in time coming, that shall be demandants against great " and rich men, which will defend themselves by the malice aforesaid; " and the demandant cannot have his averment against such warrantors, " when they be vouched in form aforesaid, because they be present, and " will warrantise freely;" 'By his common council hath ordained, and 'from henceforth, that is to say, from the feast of St. *Hilary*, the 'twentieth year of his reign, he hath commanded to be observed, that 'when the tenant doth vouch any to warranty, and the demandant will 'aver in form before rehearsed, his averment shall be admitted, whether 'the party vouched be absent or present, without any respect had unto 'his absence or presence.'

Averment.

[No. LIII.] 20 Edward I. stat. 2.—Tenant for Life committeth Waste, he in the Reversion brought an Action of Waste, and dieth before Judgment, his Heir brought an Action for the same Waste.

20 Edward I. stat. 2. Not a statute.

" WILLIAM BUTLER which is within age, and in ward of our Lord " the King, hath shewed unto his Highness, that where *Gawin* " *Butler* his brother (whose heir he is) had impleaded on *Walter de* " *Hapeton* by the King's writ, for waste and destruction made by him " the said *Walter* in certain his lands and tenements, which the same " *Walter* held for term of his life, of the inheritance of the aforesaid " *Gawin* in *Wimme* and *Thirke*; and the aforesaid *Gawin*, before he had " obtained judgment, died, after whose death the aforesaid *William* by " like writ impleaded the aforesaid *Walter* for the waste and destruc- " tion made by him of long time. The same *Walter* before *Gilbert* " *Thornton* and his companions, assigned to hear the King's pleas, came " in, and said, that he ought not to answer to the same *William* for the " waste and destruction made in the time of another, before the right of " the said inheritance descended unto him, and thereupon demanded " judgment. And forasmuch as certain justices did not agree in giving " of the said judgment, because it seemed to some that it should not be " agreeable to the law, that any person should obtain advantage and re- " compence by the aforesaid writ, which is a writ of trespass done to a " person certain, but only the same person to whom and in whose time " the trespass was done; other justices, with the more part of the King's " council, were in the contrary opinion, alleging by divers reasons, that " the said *William* ought to be heard and answered unto, and all other " whatsoever they be, in like cases or in like trespasses: And because " like matters have remained not amended, and trespasses unpunished, " which was inconvenient:"

'II. Wherefore our Lord the King, in his full Parliament holden the 'day after the feast of the *Purification*, in the twentieth year of his reign, 'by a general council hath ordained, and from henceforth hath com- 'manded to be straitly observed, That every heir (in whose ward soever 'he be, and as well within age as of full age) shall have his recovery by 'a writ of waste in the foresaid case, and also in other where the same 'writ ought to hold place; and it shall hold place as well for waste and 'destruction made in lands and tenements of his own inheritance, and as 'well in the times of his ancestors, as at any other time that the fee and 'inheritance descended unto him, and shall be answered unto therefore; 'and that he shall recover the tenements wasted, and damages, as it is 'ordained in the second statute of *Westminster* of damages to be re- 'covered in a writ of waste, if the tenant be convict of waste. And it is

13 Ed. 1. stat. 1. c. 14.

No. LIII. 20 Edward I. stat. 2.

'commanded by the King himself unto the same *Gilbert Thornton* and 'his companions, that they do proceed in the foresaid matter, and in 'otherlike from henceforth, and judgment shall be given according as 'the matter is found. And likewise it is commanded unto the justices, 'that they shall cause all the foresaid things to be straitly observed 'before them from henceforth.'

[No. LIV.] 20 Edward I. stat. 3.—Where a Stranger coming in by a collateral Title, not Party to the Suit, shall be received.

[No. LV.] 28 Edward I. stat. 3. c. 15.—In Summons and Attachments in Plea of Land the Writ shall contain Fifteen Days.

28 Edward I. stat. 3. c. 15.

'IN summons and attachments in plea of land, the summons and at- 'tachments from henceforth shall contain the term of fifteen days 'full at the least according to the common law, if it be not in attach- 'ment of assises taken in the King's presence, or of pleas before justices 'in eyre, during the eyre.'

[No. LVI.] 34 Edward I. stat. 1.—Jointenancy pleaded in Abatement of a Writ, &c.

[No. LVII.] 12 Edward II. stat. 1. c. 1.—Tenants in Assise of *Novel dissèisin* may make atturnies.

[At length in Part IV. Class II. No. 5.]

[No. LVIII.] 12 Edward II. stat. 2.—Several Cases wherein Essoigns do not lie.

12 Edward II. stat. 2.

'HERE is declared how many ways essoigns may be challenged, and 'in what cases essoigns do lie, and in what not; that is to say, an 'essoign lieth not where the land is taken into the King's hands Essoign 'lieth not where the party is distrained by his land and chattels. Essoign 'lieth not where any judgment is given thereupon. Essoign of *ultra* '*mare* lieth not where another time the party hath been essoigned *de* '*malo veniendi*. It lieth not where the party hath essoigned himself 'another day. It lieth not where the sheriff was commanded to make 'the party to appear. Essoign *de servitio regis* lieth not where the party 'is a woman, unless because she be nurse, a midwife, or commanded 'by writ *ad ventrem inspiciendum*. It lieth not for that the plaintiff 'hath not found pledges to prosecute the suit. It lieth not where 'the party hath an attorney in his suit. It lieth not where the es- 'soigner confesseth that he is not in our Lord the King's service. It 'lieth not where the summons is not returned, or the party not attached, 'for that the sheriff hath returned *non est inventus*. It lieth not where 'the party another time was essoigned, *de servitio regis*, that is to wit, 'such a day, and now he hath not put in his warrant. * *It lieth not* '*where he was re-summoned in assise of Mortdauncester, or Darrein pre-* '*sentment*. It lieth not because such a one is not named in the writ. It 'lieth not where the sheriff hath a precept to distrain the party to come 'by his lands and goods to attach him. It lieth not where the bishop 'was commanded to cause the party to appear. It lieth not for that the 'term is passed. And it is to be noted, that an essoign *de servitio domi-* '*ni regis* is allowed after the *grand cape*, *petty cape*, and after distresses 'taken upon the lands and goods.'

* Note, The Order is transposed in the translation.

No. LIX. 2 Edw. III. c. 17.

[No. LIX.] 2 Edward III. c. 17.—A Writ of Deceit shall be maintainable in Case of Garnishment in Plea of Land.

[No. LX.] 9 Edward III. stat. 1. c. 2.—No Man shall lose Land because of *Nonplevin*.

[No. LXI.] 14 Edward III. stat. 1. c. 17.—A *Juris utrum* maintainable for a Parson or Vicar.

14 Edward III. stat. 1. c. 17.

'ITEM it is assented and established, That parsons, vicars, wardens of chapels, and provosts, wardens and priests of perpetual chaunteries, shall have their writs of *juris utrum* of lands and tenements, rents and possessions annexed, or given perpetually in alms to vicarages, chapels, or chaunteries, and recover by other writs in their case as far forth as parsons of churches or prebends.'

[No. LXII.] 14 Edward III. stat. 1. c. 18.—If the Tenant will vouch to Warranty a dead Man, the Demandant may aver that he is dead.

[No. LXIII.] 25 Edward III. stat. 3. c. 7.—The Ordinary may counterplead the King's Title for a Benefice fallen by Lapse.

25 Edward III. stat. 3. c. 7.

"ITEM, Because that many presentments to divers benefices of holy church, as well of the patronage of lay people, as of people of holy church, which were void by six months, whereof the collation of such benefices by lapse of time was devolute, and of right pertaining to the ordinaries of the places, were recovered by the King by judgments thereof given of the assent of the said patrons, in deceit of the said collations so made reasonably by the said ordinaries; in which pleas the ordinaries nor their clerks, to whom they did give such benefices, were not received to shew nor defend their right in this behalf, nor to counterplead the King's right so claimed, which is not reasonable:" Wherefore the King, by the assent of the said Parliament, will and granteth for him and his heirs, that when archbishops, bishops, or other ordinaries, have given a benefice of right devolute to him by lapse of time, and after the King presenteth and taketh the suit against the patron, which percase will suffer that the King shall recover without action tried, in deceit of the ordinary, or the possessor of the said benefices, that in such case, and all other cases like, where the King's right is not tried, the archbishop or bishop, ordinary or possessor, shall be received to counterplead the title taken for the King, and to have his answer, and to shew and defend his right upon the matter, although that he claim nothing in the patronage in the case aforesaid.'

[No. LXIV.] 25 Edward III. stat. 5. c. 16.—The Exception of Nontenure of Parcel shall not abate the whole Writ.

[No. LXV.] 1 Richard II. c. 9.—A Feoffment of Lands

No. LXV. 1 Richard II. c. 9.

or Gift of Goods for Maintenance shall be void. An Assise is maintainable against the Pernor of the Profits of Lands.

[No. LXVI.] 7 Richard II. c. 10.—Where an Assize shall be taken of Rents, issuing forth of Lands, in divers Counties.

7 Richard II. c. 10.

'ITEM it is ordained and assented, That an assise of *novel disseisin* shall be from henceforth granted and made of rent behind due of 'tenements being in divers counties, to be holden in the confine of the 'counties, within which the tenements be; and thereupon the assise 'taken and tried by people of the said counties in the same manner as is 'done of a common of pasture being in one county, and appendant to 'tenements in another county; and that as well of disseisins done in 'times past, as of disseisins yet to be done; and that writs thereupon at 'the suit of the plaintiffs be made from henceforth in the Chancery 'without any manner of contradiction, in a due form.'

[No. LXVII.] 13 Richard II. st. 1. c. 17.—Where he in the Reversion may be received in a Suit commenced against the particular Tenant.

13 Richard II. st. 1. c. 17.

"ITEM, Because that when tenants for term of life, tenants in dower, "or by the law of *England*, or in tail after possibility of issue ex- "tinct, be impleaded, they be often of the covin of the demandants, "that the tenements demanded against them shall be recovered, and "they will not pray in aid, nor vouch to warranty them in the rever- "sion, but plead in chief such a plea whereby they know well the tene- "ments shall be lost, in disherison of them in the reversion;" 'it is 'accorded and assented, That if any such tenant be impleaded, and he 'in the reversion come into the court, and prayeth to be received to 'defend his right at the day that the tenant pleadeth to the action, or 'before, he shall be received to plead in chief to the action, without 'taking any delay by voucher, aid prayer, nonage, or any other delay 'whatsoever, so that after such receipt he shall have no manner delay 'by protection, essoin of the King's service, common essoin, nor any 'other delay whatsoever, but that the business shall be hasted in as 'much as it may be by the law; and that days of grace be given by the 'discretion of the judges between the demandant and him that is re- 'ceived in such case, without giving the common day in plea of land, 'if the demandant will not assent, to the intent that the demandants be 'not too much delayed, because they must plead with two adversaries; 'and in the right of pleas that be now depending in such case, they in 'the reversion shall be received in the manner aforesaid, at the next 'day that the parties have in court, although the same parties have 'pleaded in chief before this time.

He that prayeth to be received, shall find surety of the issues of the land in demand.

'II. Provided always, That they in the reversion which pray to be 'received, as before is said, shall find surety of the issues of the tene- 'ments demanded for the time that the same demandants be delayed, 'after the said plea determined between the demandants and tenants, if 'the judgment pass for the demandant against them in the reversion 'aforesaid, as well where the receipt is counterpleaded, as where it is 'granted.'

[No. LXVIII.] 15 Richard II. c. 12.—No Man shall be compelled to answer for his Freehold before the Council of any Lord.

[At length, *supra*.]

No. LXIX. 16 Rich. II. c. 2.

[No. LXIX.] 16 Richard II. c. 2.—The Forfeiture of him that compelleth any Person to answer for his Freehold.

[At length *supra*.]

[No. LXX.] 4 Henry IV. c. 7.—The Disseisee shall have an Assise against the Disseisor taking the Profits.

4 Henry IV. c. 7.
1 R. 2. c. 9.

"ITEM, Whereas in the statute made the first year of King *Richard* II. it was ordained, That where several persons did disseise other of their freehold, and made feoffment to divers people, as well to have maintenance, as also to make the disseisees to be ignorant, against whom they ought to take their writ; that the disseisees in such case might take their writ against them which thereof shall take the profits, so that the disseisees commence their suit within the year next after the disseisin; and the same ordinance should hold place in every other action or plea where such feoffments be made by fraud or collusion, to have their recovery against such feoffers, if they thereof take the profits:" 'Our said Lord the King thinking the said statute to be very 'mischievous and prejudicial to his people, because of the shortness of 'the time, by the assent of the said Lords, and at the request of the 'Commons aforesaid, hath ordained and stablished, That such disseisees 'shall have their action against the first disseisor, during the life of the 'same disseisor, so that such disseisor thereof take the profits at the 'time of the suit commenced. And as to other writs in plea of land, 'the demandant shall commence his suit within the year against him 'which is tenant of the freehold at the time of the action accrued to 'him, so that such tenant thereof take the profits at the time of such 'suit commenced, notwithstanding the said statute.'

[No. LXXI.] 4 Henry IV. c. 8.—In what Cases a special Assise is maintainable against a Disseisor with Force.

[No. LXXII.] 4 Henry IV. c. 22.—The Remedy where by the King's Presentation any Incumbent is put forth.

4 Henry IV. c. 22.
25 Ed. 3. st. 3. c. 3.
13 R. 2. stat. 1. c. 1.

"ITEM, Whereas it is ordained by the statute made the twenty-fifth year of King *Edward*, grandfather to our Lord the King, that if the King make collation or presentment to any benefice in another's right, that the title whereupon he groundeth him should be well examined that it be true; and at what time, before judgment given, the title be found by good information untrue and unjust, the collation or presentment thereof made, shall be repealed and adnulled. And moreover, in a statute made after in the time of King *Richard*, it was ordained and established, That if the King present to any benefice that is full of any incumbent, that the King's presentee shall not be received by the ordinary, till the King hath recovered his presentment by process of the law in his own court; and if any presentee of the King be otherwise received, and the incumbent put out without due process as afore is said, the same incumbent shall commence his suit within a year after the induction of the presentee;" 'Our Lord 'the King considering the great mischief of the incumbent in this be-'half, hath ordained and stablished, by the assent aforesaid, That if any 'such incumbent be put out of his benefice without due process in the 'manner aforesaid, That the said incumbent so put out without pro-'cess, may be at large, and sue for his remedy by the said statute and

No. LXXII. 4 Henry IV. c. 22.

'begin his suit in this case at what time shall please him, within the 'year, or after, at his will; and that as well for time past, as for 'the time to come, notwithstanding the term so limited by the said 'statute.'

[No. LXXIII.] 2 Henry VI. c. 16.—Persons in the Reversion may sue for their Right to Estates, notwithstanding any Defaults committed by the former Possessors.

[No. LXXIV.] 11 Henry VI. c. 2.—The Penalty where a Sheriff is named a Disseisor in an Assise.

11 Henry VI. c. 2.

"ITEM, Whereas several persons do often sue assises of *novel disseisin* "before justices assigned against divers persons, and by craft and "collusion to have their writs of their said assises directed to the coro- "ners of the counties where their tenements be, to make execution of "the said writs, do name in their said assises the sheriff of the same "county one of the disseisors, where he is not, neither ever was disseisor "or tenant of the tenements in demand, whereby oftentimes the said "assises be awarded by default of the tenants which have no knowledge "of those assises, for that they found not any assise against them in the "file of the sheriff, nor have any suspicion of any such assise taken "against the sheriff and them;" 'Our Lord the King, willing in this 'case to provide remedy, of the assent and authority aforesaid, hath or- 'dained, That in all such assises purchased, at this time depending, or 'hereafter to be purchased, between any persons whatsoever they be, 'before any such justices, in which assises any such sheriff is named 'disseisor, if the tenants in the said assises or any of them will aver, 'that the said sheriff is not, nor ever was, disseisor nor tenant of the 'tenements in demand, but was named disseisor by collusion, the aver- 'ment shall be received. And if it be found by the said assise, that the 'said sheriff is not, nor ever was, disseisor nor tenant of the tenements 'in demand, but was named disseisor by collusion, then the said justices 'shall cause to be abated and quashed the said writ purchased, or to be 'purchased in the form above said; and that the plaintiffs or plaintiff 'be in the grievous mercy of the King.'

[No. LXXIV. a.] 11 Henry VI. c. 3.—An Assise, &c. maintainable against the Pernor of the Profits.

[No. LXXV.] 11 Henry VI. c. 5.—The Remedy where a Tenant granteth over his Estate, taketh the Profits, and committeth Waste.

[No. LXXVI.] 1 Henry VII. c. 1.—A *Formedon* maintainable against the Pernor of the Profits of Lands enfeoffed to Use. The Tenant in the same Action shall have Aid Prayer, Voucher, and other Advantages. The Tenant shall have his Age and other Advantages. Recoveries against the Pernors of the Profits, and their Feoffees.

[No. LXXVII.] 21 Henry VIII. c. 3.—Plaintiffs in Assise may abridge their Plaints.

No. LXXVII. 21 H. VIII c. 3.

'FORASMUCH as assises, which have been thought the most speedy 'remedy, be now, by occasion of pleading of many bars to moieties 'and parts of the lands put in view and plaint, greatly delayed by diffi- 'culties and division of pleading; and one cause thereof is, because the 'plaintiffs in every assise in such pleas to moieties and parties, cannot 'by the law abridge their plaints:' For remedy whereof be it enacted, That the plaintiff in every assise from henceforth may at his pleasure sever and abridge his plaint, of any part or parts whereunto any bar is pleaded by moiety, in like manner as he or they might do in case the pleas in bar had been made and divided to any certainty or number of acres in the plaint; and that the plaint for the residue of the part or parts of the lands not abridged, shall be and stand good and effectual in the law. 'Qua quidem billa perlecta, & ad plenum intellecta, per dic- 'tum dom' regem ex assensu & auctoritat' parliamenti predicti taliter 'est responsum.' *Imperfect on the Roll.*

[No. LXXVIII.] 21 Henry VIII. c. 15.—Fermors shall enjoy their Leases against Recoveries by feigned Titles, &c.

[See this Statute at length in Vol. I.]

[No. LXXIX.] 32 Henry VIII. c. 32.—Joint Tenants for Term of Life or Years.

[This at length, Vol. I.]

[No. LXXX.] 31 Elizabeth, c. 3.—An Act for the avoiding of privy and secret Outlawries of the Queen's Subjects.

31 Elizabeth, c. 3.

II. AND for the avoiding of secret summons in real actions, without convenient notice of the tenants of the freehold, Be it also ordained and enacted by the authority of this present Parliament, That after every summons upon the land in any real action, fourteen days at the least before the day of the return thereof proclamations of the summons shall be made on a *Sunday* in form aforesaid, at or near to the most usual door of the churches or chapel of that town or parish, where the land whereupon the summons was made doth lie, and that proclamation so made as aforesaid, shall be returned, together with the names of the summoners: And if such summons shall not be proclaimed and returned according to the tenor and meaning of this Act, then no *grand cape* to be awarded but *alias* and *pluries* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned according to the tenor and meaning of this Act.

A proclamation shall be of the summons in a real action at the church door.

[See *supra* for more of this Act.]

PART IV.

CLASS XIX.

Distress, Replevin, and matters relating to Landlord and Tenant.

[No. I.] 51 Henry III. stat. 4. (De Districtione Scaccarii.)—What Distress shall be taken for the King's Debts, and how it shall be used.

[Inserted Part II. Class XII. No. 1.]

[No. II.] *Statute of Marlebridge*, 52 Henry III. (A.) c. 1.—The Penalty of taking a Distress wrongfully.

52 Henry III. c. 1.

"WHEREAS at the time of a commotion late stirred up within this realm, and also sithence, many great men, and divers other, refusing to be justified by the King and his court, like as they ought and were wont in time of the King's noble progenitors, and also in his time; but took great revenges and distresses of their neighbours, and of other, until they had amends and fines at their own pleasure; and further, some of them would not be justified by the King's officers, nor would suffer them to make delivery of such distresses as they had taken of their own authority:" 'It is provided, agreed, and granted, that all persons, as well of high, as of low estate, shall receive justice in the King's court; (1) and none from henceforth shall take any such revenge or distress of his own authority, without award of our court, though he have damage or injury, whereof he would have amends of his neighbour either higher or lower. And upon the foresaid article it is provided and granted, that if any from henceforth take such revenges of his own authority, without award of the King's court, (as before is said) and be convict thereof, he shall be punished by fine, and that according to the trespass. And likewise if one neighbour take a distress of another without award of the King's court, whereby he hath damage, he shall be punished in the same wise, and that after the quantity of the trespass. And nevertheless sufficient and full amends shall be made to them that have sustained loss by such distresses.'

The punishment for an unlawful distress.

(B.) C. 2.—None but Suitors shall be distrained to come to a Court.

52 Henry III. c. 2.

'MOREOVER, none (of what estate soever he be) shall distrain any to come to his court, which is not of his fee, or upon whom he hath no jurisdiction by reason of hundred or bailiwick; nor shall take distresses out of the fee or place where he hath bailiwick or jurisdiction; And he that offendeth against this statute shall be punished in like manner, and that according to the quantity and quality of the trespass.'

(1) By this statute it appears that the plaint, though given for expedition before the sheriff, may at any time be removed and recorded in the Court of the King; Gilb. Distr. 3 Ed. 147. The delivery of a *recordari*, after interlocutory and before final judgment, is a stop to all further proceedings in the county court; Bevan v. Prothesk, 2 Bur. 1151.

No. II.
52 Hen. III. c. 3.

(C.) C. 3.—A Lord shall not pay a Fine for distraining his Tenant.

'IF any, of what estate soever he be, will not suffer such distress as he hath taken, to be delivered by the King's officers, after the law and custom of the realm, or will not suffer summons, attachments, or executions of judgments given in the King's court to be done according to the law and custom of the realm as is aforesaid, he shall be punished in manner aforesaid, as one that will not obey the law; * *and that according to the quantity of the offence.* And if any, of what estate soever he be, distrain his tenant for services and customs which he alleges to be due unto him, or for any other thing, for the which the lord of the fee hath cause to distrain, and after it is found that the same services are not due, the lord shall not therefore be punished by fine, as in the cases aforesaid, if he do suffer the distresses to be delivered according to the law and custom of the realm; but shall be amerced as hitherto hath been used, and the tenant shall recover his damages against him.'

The punishment for unlawful distress.

* *The words in Italics not in the original.*

The lord distraining his tenant shall not pay a fine.

(D.) C. 4.—A Distress shall not be driven out of the County. And it shall be reasonable.

52 Henry III. c. 4.

'NONE from henceforth shall cause any distress that he hath taken to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, and without judgment, he shall make fine (as above is said) as for a thing done against the peace: Nevertheless if a lord presume so to do against his tenant, he shall be grievously punished by amerciament. (1) Moreover, distresses shall be reasonable, and not too great. And he that taketh great and unreasonable distresses, shall be grievously amerced for the excess of such distresses.'

Distresses shall be reasonable.

(E.) C. 15.—In what Places Distresses shall not be taken.

52 Henry III. c. 15.

'IT shall be lawful (2) for no man from henceforth, for any manner of cause, to take distresses (3) out of his fee, (4) nor in the King's highway, (5) nor in the common street, but only to the King or his officers having special authority to do the same.'

(F). C. 21.—Who may take Replevins of Distresses.

52 Henry III. c. 21.

'IT is provided also, That if the beasts of any man be taken, and wrongfully withholden, the sheriff, after complaint made to him thereof, (6) may deliver them without let or gainsaying of him that

Who may make replevin for beasts distrained.

(1) An action of trespass cannot be maintained for taking an excessive distress, but the remedy is by a special action founded on the statute; Hutchinson *v.* Chambers, 1 Bur. 379; Lynne *v.* Moody, 2 Str. 851: except when the distress is of gold or silver, which are of a certain known value; Moir *v.* Munday, cited 1 Bur. 590; and see Crowther *v.* Ramsbottom, 7 T. R. 654.

(2) The distress is not void so as to debar the lord of his avowry, but the remedy is by action; 1 Inst. 131.

(3) A lord may *seize* for a heriot custome on the highway, for that is not a distress; 1 Inst. 131.

(4) This is understood of distresses by reason of seignory, and not distresses for rent charges; or by reason of a leet; 1 Inst. 131. The provision is only in affirmance of the common law; id. 131.

(5) If the lord come to distrain, and see the beasts within his fee, and before he can distrain them the tenant chase them into the highway, the lord may, as hath been said, distrain them; 1 Inst. 131.

(6) This statute authorizes the sheriff to grant replevin upon plaint out of court, without writ, to an unlimited amount. In Hallett *v.* Birt, Lord Raym. 218; 2 Salk. 580; Skin. 674; 5 Mod. 248, it was ruled that the hundred court could not claim such a power by prescription, as every hundred court is only an emanation of the county court. But in Wilson *v.* Hobday, 4 M. & S. 120, the court were

No. II. 52 Hen. III. c. 21.

'took the beasts, if they were taken out of liberties. And if the beasts 'were taken within any liberties, and the bailiffs of the liberty will not 'deliver them, then the sheriff, for default of those bailiffs, shall cause 'them to be delivered.'

[No. III.] 3 Edward I. (*Westminster* first) c. 16.—None shall distrain out of his Fee, nor drive the Distress out of the County.

3 Edward I. c. 16.

"IN right thereof, that some persons take and cause to be taken, the "beasts of others; chasing them out of the shire where the beasts "were taken;" 'it is provided also, that none from henceforth do so; 'and if any do, he shall make a grievous fine, as is contained in the 'statute of *Marlebridge*, made in the time of King *Henry*, father to 'the king that now is. And likewise it shall be done to them which 'take beasts and distrain out of their fee, and shall be more grievously 'punished, if the manner of the trespass do so require.'

A distress shall not be driven out of the county.

Distraining out of his fee.

[No. IV.] 3 Edward I. c. 17.—The Remedy if the Distress be impounded in a Castle, or Fortress.

3 Edward I. c. 17.

'IT is provided also, That if any from henceforth take the beasts of 'other, and cause them to be driven into a castle or fortress, and 'there within the close of such castle or fortress do withhold them 'against gage and pledges, whereupon the beasts be solemnly demanded 'by the sheriff, or by some other bailiff of the King's, at the suit of 'the plaintiff, the sheriff or bailiff, taking with him the power of the 'shire or bailiwick, do assay to make replevin of the beasts from him 'that took them, or from his lord, or from other, being servants of the 'lord (whatsoever they be) that are found in the place whereunto the 'beasts were chased; if any deforce him of the deliverance of the 'beasts, or that no man be found for the lord, or for him that took 'them, for to answer and make the deliverance, after such time as the 'lord or taker shall be admonished to make deliverance by the sheriff 'or bailiff, if he be in the country, or near, or there whereas he may 'be conveniently warned by the taker, or by any other of his to make 'deliverance; if he were out of the country when the taking was, and 'did not cause the beasts to be delivered incontinent, that the King for 'the trespass and despite, shall cause the said castle or fortress to be 'beaten down without recovery; and all the damages that the plaintiff 'hath sustained in his beasts, or in his gainure, or any otherwise (after 'the first demand made by the sheriff or bailiff) of the beasts shall be 'restored to him double by him that took the beasts, if he have whereof; 'and if he have not whereof, he shall have it of the lord, at what time 'or in what manner the deliverance be made, after that the sheriff or 'bailiff shall come to make deliverance; and it is to wit, that where 'the sheriff ought to return the King's writ to the bailiff of the lord of 'the castle or fortress, or to any other to whom the return belongeth, 'if the bailiff of the franchise will not make deliverance after that the 'sheriff hath made his return unto him, then shall the sheriff do his 'office without further delay, and upon the foresaid pains. And in 'like manner deliverance shall be made by attachment of plaint made 'without writ, and upon the same pain. And this is to be intended in 'all places where the King's writ lieth. And if that be done in the 'marches of *Wales*, or in any other place where the King's writs be 'not current, the King, which is sovereign lord over all, shall do right 'there unto such as will complain.'

A non omittas to the sheriff if the bailiff do not execute the writ.

Marches of Wales.

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of opinion that that case does not furnish a rule for replevins in other courts, which owe their origin and jurisdiction to charters from the crown, and in which pleas of replevin upon plaint, without writ, may be maintained.

No. V.
6 Edward I. c. 5.

[No. V.] 6 Edward I. (*Gloucester*) c. 5.—Several Tenants against whom an Action of Waste is maintainable.

[Inserted Part II. Class I. No. 7.]

[No. VI.] 13 Edward I. (*Westminster* second) c. 2.—A *Recordare* to remove a Plaint. Pledges to prosecute a Suit. Second Deliverance.

13 Edward I. c. 2.

"FORASMUCH as lords of fees distraining their tenants for services "and customs due unto them, are many times grieved because "their tenants do replevy the distress by writ or without writ: And "when the lords, at the complaint of their tenants, do come by attach- "ment into the county, or unto another court, having power to hold "pleas of *Withernam*, and do avow the taking good and lawful, by "reason that the tenants disavow to hold ought, nor do claim to hold "any thing of him which took the distress and avowed it, he that dis- "trained is amerced, and the tenants go quit; to whom punishment "cannot be assigned for such disavowing by record of the county, or "of other courts having no record."

The mischiefs which lords distraining their tenants did suffer.

A recordare to remove a plaint out of the county.

'II. It is provided and ordained from henceforth, That where such 'lords cannot obtain justice in counties and such manner of courts 'against their tenants, as soon as they shall be attached at the suit of 'their tenants, a writ shall be granted to them to remove the plea be- 'fore the justices afore whom, and none other where, justice may be 'ministered unto such lords; and the cause shall be put in the writ, 'wherefore such a man distrained in his fee for services and customs to 'him due. Neither is this Act prejudicial to the law commonly used, 'which did not permit that any plea should be moved before justices at 'the suit of the defendant. For though it appear at the first shew that 'the tenant is plaintiff, and the lord defendant, nevertheless; having 'respect to that, that the lord hath distrained, and sueth for services 'and customs being behind, he appeareth indeed to be rather actor, or 'plaintiff, than defendant. And to the intent the justices may know 'upon what fresh seisin the lords may avow the distress reasonable upon 'their tenants; from henceforth it is agreed and enacted, That a rea- 'sonable distress may be avowed upon the seisin of any ancestor or 'predecessor since the time that a writ of *novel disseisin* hath run. And 'because it chanceth sometime that the tenant, after that he hath re- 'plevied his beasts, doth sell or alien them, whereby return cannot be 'made unto the lord that distrained, if it be adjudged:

Pledges to prosecute the suit and to make return.

'III. It is provided, That sheriffs or bailiffs from henceforth shall not 'only receive of the plaintiffs pledges (1) for the pursuing of the suit, 'before they make deliverance of the distress, but also for the return 'of the beasts, if return be awarded. And if any take pledges other- 'wise, he shall answer for the price of the beasts, and the lord that dis- 'traineth shall have his recovery by writ, that he shall restore unto him 'so many beasts or cattle; and if the bailiff be not able to restore, his 'superior shall restore. And forasmuch as it happeneth sometime, that 'after the return of the beasts is awarded unto the distrainor, and the 'party so distrained, after that the beasts be returned, doth replevy 'them again, and when he seeth the distrainor appearing in the court 'ready to answer him, doth make default, whereby return of the 'beasts ought to be awarded again unto the distrainor, and so the beasts 'be replevied twice or thrice, and infinitely, and the judgments given 'in the King's court take no effect in this case, whereupon no remedy

(1) The sheriff is answerable for the sufficiency of the pledges; Richards *v.* Acton, 2 Bl. 1220; Rous *v.* Patterson, 16 Vin. Ab. 399. Some evidence must be given of the insufficiency of the pledges, but very slight evidence is sufficient to throw the burthen on the sheriffs; Saunders *v.* Darling, B. N. P. 60. See post, 11 G. II. c. 19, sec. 23, and Notes.

No. VI. 13 Edward I. c. 2.

'hath been yet provided: in this case such process shall be awarded, 'that so soon as return of the beasts shall be awarded to the distrainor, 'the sheriff shall be commanded by a judicial writ to make return of 'the beasts unto the distrainor; in which writ it shall be expressed that 'the sheriff shall not deliver them without writ, making mention of 'the judgment given by the justices, which cannot be without a writ 'issuing out of the rolls of the said justices before whom the mat-

A writ of second deliverance.

'ter was moved. Therefore when he cometh unto the justices, and 'desireth replevin of the beasts, he shall have a judicial writ, that the 'sheriff taking surety for the suit, and also of the beasts or cattle to be 'returned, or the price of them (if return be awarded) shall deliver unto 'him the beasts or cattle before returned, and the distrainor shall be 'attached to come at a certain day before the justices, afore whom the

A distress irrepleviable.

'plea was moved in presence of the parties. And if he that replevied 'make default again, or for another cause return of distress be awarded, 'being now twice replevied, the distress shall remain irrepleviable; but 'if a distress be taken of new, and for a new cause, the process above-'said shall be observed in the same new distress.'

[No. VII.] 25 Edward III. stat. 5. c. 17.—Process of Exigent shall be awarded in Debt, Detinue, and Replevin.

[This at length, Part IV. Class III. No. 8.]

[No. VIII.] 7 Henry VIII. c. 4.—An Act concerning Avowries for Rents and Services.

7 Henry VIII. c. 4.

'WHEREAS divers, as well noblemen as other the King's subjects, 'have suffered recoveries against them of divers their manors,

How rents and services may be recovered by avowry.

'lordships, lands, and tenements, for the performance of their wills, or 'for the surety of their wives' jointures, or for the jointure of their 'sons and heirs apparent, and their wives, or of any other person or 'persons, according to their covenants and agreements, and those persons 'that so have recovered the said manors by the course of the common 'law, had no remedy, nor may have, to compel the fermors, freehold-'ers, and tenants, which held of the same manors by rents, services, or 'customs, to atturn to them; nor could by the order of the law attain 'to the said rents, services, or customs (if they were denied) by distress 'or action, without they could once attain to the possession of the 'same rents, services, and customs, by paying or doing the said rents, 'services or customs, by the same freeholders, fermors and tenants; 'which to do, divers and many of them have oftentimes refused, and 'yet do, to the great offence and charge of their conscience, not only 'to the disheritance of the said recoverers, but also in breaking of the 'last wills of them against whom such recovery is had, and also to the 'disheritance of the said husband and wife, or other to whose use the 'same recovery was so had. Also if there were any advowson append-'ant to any of the said manors, the same advowson had fallen void, and 'a stranger had presented, the said recoverers, nor they to whose use 'the same recoveries were had, had no remedy for the same disturb-'ance, and sometime thereby they have been disinherited.'

Recoverer may distrain and shall have a quare impedit.

II. Be it therefore enacted by this present parliament, and by authority of the same, That the recoverers in all such recoveries, their heirs and assigns, may from henceforth distrain for the foresaid rents, services and customs, so being due and unpaid, and make avowry, or justify the same, as those persons against whom the said recovery is, should have done if the said recovery had not been had; and also have like remedy for the recovering of the said rents, services, and customs by avowry; and also a *quare impedit* for the said advowson, if any disturbance be made; as those persons against whom the said recoveries were

had, might or should have had by the course of the common law afore the said recovery, if any such rents, services, or customs had been denied them, or any such disturbance had been had in their times.

No. VIII. 7 H. VIII. c. 4.

III. And also that every avowant, and every other person or persons that make avowry, conisance, or knowledge, or justify, as baily to any other person or persons in any *replegiari*, or second deliverance for any rent, custom, or service, if their avowry, conisance, or justification be found for him, or the plaintiffs in the said actions otherwise barred, shall recover their damages and costs that they have sustained, as the plaintiff should have done if they had recovered in the said replevins.

Avowant shall recover his damages, &c.

[No. IX.] 21 Henry VIII. c. 19.—Avowries shall be made by the Lord upon the Land, without naming his Tenant.

21 Henry VIII. c. 19.

'WHERE as well the noblemen of this realm, as divers other persons, by fines, recoveries, grants, and secret feoffments, and leases made by their tenants to persons unknown, of the lands and tenements holden of them, have been put from the knowledge of their tenants, upon whom they should by order of the law make their avowries for their rents, customs and services, to their great losses and hinderances:'

II. Be it therefore enacted, established, and ordained by authority of this present Parliament, That wheresoever any manor lands, tenements, and other hereditaments be holden of any manner person or persons, by rents, customs, or services, that if the lord, of whom any such manor lands, tenements or hereditaments be so holden, distrain upon the same manors, lands, or tenements, for any such rents, customs, or services, and replevin thereof be sued, that the lord of whom the same lands, tenements or hereditaments be so holden, may avow, or his bailiff or servant make conisance, or justify, for taking of the said distresses upon the same lands, tenements, or hereditaments so holden, as in lands or tenements within his fee or seignory, alleging in the said avowry, conisance, and justification, the same manors, lands, and tenements to be holden of him(1) without naming of any person certain to be tenant of the same, and without making any avowry, justification, or conisance upon any person certain; and likewise the lord, baily, or servant to make avowry, justification, or conisance, in like manner and form upon every writ sued of second deliverance.

An avowry may be made by the lord upon the land holden of him without naming his tenant.

Avowry in second deliverance.

III. And also be it enacted by the said authority, That every avowant, and every other person or persons that make any such avowry, justification, or conisance, as baily or servant to any person or persons in any *replegiare* or second deliverance, for rents, customs, services, or for damage fesant, or other rent or rents, upon any distress taken in any lands or tenements, if the same avowry, conisance, or justification be found for them, or the plaintiffs in the same be nonsuit, or otherwise barred, that then they shall recover their damages and costs(2) against the said plaintiffs, as the same plaintiffs should have done or had, if they had recovered in the *replegiare* or second deliverance found against the said defendants.

The avowant shall recover damages and costs of suit.

IV. And be it also ordained, That the said plaintiffs and defendants in the said writs of *replegiare*, or writs of second deliverance, and in

Like pleas and aid prayers at the common law.

(1) To an avowry upon the statute the plaintiff cannot plead *non tenuit* generally, but he may plead all other pleas as at common law; Paramor *v.* Chapman, Cro. Jac. 127.

(2) If the plaintiff plead a bad plea in bar, and the defendant, instead of demurring, replies, and after verdict for the plaintiff, judgment is given for the defendant, on account of the insufficiency of the plea, the defendant is not entitled to any costs subsequent to the plea. Per Rooke, J. "The statute was not intended to give costs to an avowant in replevin in a different manner from what they are given by other statutes in other actions;" Da Costa *v.* Clarke, 2 B. and P. 376.

No. IX. 21 Hen. VIII. c. 19.

every of them, shall have like pleas, and like aid-prayers in all such avowries, conisances, and justifications (pleas of disclaimer only except) as they might have had before the making of this Act, and as though the said avowry, conisance, or justification had been made after the due order of the common law.

Like joinder in aids as at the common law.

V. And it is further enacted by the said authority, That all such persons as by the order of the common law may lawfully join to the plaintiffs or defendants in the said writs of *replegiare*, or second deliverance, as well without process as by process, shall from henceforth join unto the said plaintiffs or defendants, as well without process as by process, and to have like pleas, and like advantages in all things (disclaimer only except) as they might have done by the order of the common law before the making of this Act.

[No. X.] 32 Henry VIII. c. 28.—Lessees to enjoy the Farm against the Tenants in Tail.

[Inserted Part II. Class VIII. No. 1.]

[No. XI.] 32 Henry VIII. c. 34.—Concerning Grantees of Reversions to take Advantage of the Conditions to be performed by the Lessees.

[Inserted Part II. Class I. No. 14.]

[No. XII.] 32 Henry VIII. c. 37.—For Recovery of Arrearages of Rents by Executors of Tenant in Fee Simple.

32 Henry VIII. c. 37.

'FORASMUCH as by the order of the common law the executors or 'administrators of tenants in fee-simple, tenants in fee-tail, and 'tenants for term of lives, (1) of rents services, rents charges, rents 'secks, and fee-farms, (2) have no remedy to recover such arrearages 'of the said rents or fee-farms as were due unto their testators in their 'lives, nor yet the heirs of such testator, nor any person having the 'reversion of his estate after his decease, may distrain, or have any 'lawful action to levy any such arrearages of rents or fee-farms, due 'unto him in his life as is aforesaid; by reason whereof, the tenants of 'the demean of such lands, tenements or hereditaments, out of the 'which such rents were due and payable, who of right ought to pay their 'rents and farms at such days and terms as they were due, do many 'times keep, hold and retain such arrearages in their own hands, so 'that the executors and administrators of the persons to whom such 'rents or fee-farms were due, cannot have or come by the said arrear-'ages of the same, towards the payment of the debts and performance 'of the will of the said testators;' For remedy whereof, be it enacted by the authority of this present Parliament, That the executors and

(1) The province of the Act is not confined to executors of tenants, *pur autre vie*, but extends to the executors of all tenants for life; Hool *v.* Bell, 1 Lord Raym. 172. Creditor by elegit of tenant for life of a rent charge is not within the Act; B. N. P. 56.: nor the executors of a grantee of a rent-charge for years, if he so long live; id. ibid. The Act does not extend to copyhold rents; Yelv. 135.

(2) In Buller, N. P. 57. is the following passage:—"Lord Coke says, if a man make lease for life, or a gift in tail, reserving a rent, this is a rent service within the statute; from which it may be inferred, that he thought a rent reserved upon a lease for years was not within it; and I apprehend that it is not; for the landlord is not tenant in fee, &c. of such a rent, and it is the executors of such tenants only who are mentioned in the Act. However, in trespass, where it appeared that the defendant had distrained the plaintiff's goods for rent due to his testator, upon a lease for years, Lord Chief Justice Lee held it to be within the the statute, and the defendant had a verdict; Powell *v.* Kellick, Westm. M. 25 Geo. II."

No. XII. 32 H. VIII. c. 37.

admintstrators of every such person or persons, unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee-farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee-farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements and other hereditaments, which were charged with the payment of such rents, or fee-farms, and chargeable to the distress of the said testator, so long as the said lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately (1) to have paid the said rent or fee-farm so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments, only by and from the same tenant by purchase, gift or descent, (2) in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry (3) upon their matter aforesaid. (4)

Redemption money paid in Wales and the marches.

II. Provided alway, That this Act, nor any thing therein contained, shall not extend to any such manor, lordship, or dominion in *Wales*, or in the marches of the same, whereof the inhabitants have used, time out of the mind of man, to pay unto every lord, or owner of such lordship, manor, or dominion, at his or their first entry into the same, any sum or sums of money, for the redemption and discharge of all duties, forfeitures and penalties, wherewith the said inhabitants were chargeable to any of their said lords ancestors or predecessors before his said entry.

The husband's remedy for rent due in the right, and in the life of his wife.

III. And further be it enacted by the authority aforesaid, That if any man which now hath, or hereafter shall have in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done, if his said wife had been then living, and make avowry upon his matter as is aforesaid.

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(1) It is not necessary in an avowry to aver that the place remains in the seisin of the person who ought to have paid the rent, or of persons claiming under him. The plaintiff, if he is not liable, should shew how he is not liable; Hool *v.* Bell, 1 Lord Raym. 172.

(2) In Braithwaite *v.* Cooksey, 1 H. B. 465. it is said that the statute enables the landlord to distrain against executors or administrators. This observation is not correct, if intended to import that there is any such express provision.

(3) To a declaration of replevin, for taking the plaintiff's goods, the defendant avowed under the stat. 32 H. 8. c. 37., as administratrix of A. B. who was seised in fee: that C. D. held the premises as tenant to him by virtue of a demise made to him C. D. at and under a certain yearly rent; and that because a sum for rent was due to A. B. at the time of his death, from C. D., and still in arrear to defendant, as administratrix, she well avowed the taking of the goods in the premises, in which, &c. the same being charged with the payment of rent to A. B., and continuing in possession of the plaintiff, as tenant to C. D.: It appearing that C. D. was possessed of the premises by virtue of a lease for twenty-one years; it was objected that the defendant was not entitled to distrain under the statute, and that the avowry was bad; but the court of C. P. held, that as the tenancy did not appear to be for years, and that as it was unnecessary for the defendant to shew how the plaintiff became entitled to or held the premises, the avowry was sufficient. Menton *v.* Gilbee, 2 Moore 48.

(4) An executor upon such avowry is entitled to costs, although this statute is subsequent to those giving costs to an avowant; 2 Rol. Rep. 437.

No. XII. 32 H. VIII. c. 37.

The remedy for a rent, the estate whereof dependethupon another's life being dead.

IV. And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have, or hereafter shall have, any rents or fee-farms for term of life or lives, of any other person or persons, and the said rent or fee-farm now be, or hereafter shall be due, behind and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or free-farm did depend or continue, and after the said person or persons do die; then he unto whom the said rent or fee-farm was due in form aforesaid, his executors or administrators shall and may have an action of debt against the tenant in demesne, that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements, out of the which the said rents or fee-farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, had been in full life and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid.

[No. XIII.] 1 & 2 Philip and Mary, c. 12.—An Act for the impounding of Distresses.

1 & 2 P. & M. c. 12.

Where distresses taken shall be impounded.

'FOR the avoiding of grievous vexations, exactions, troubles and disorder in taking of distresses, and impounding of cattle,' Be it enacted by the authority of this present Parliament, That from and after the first day of *April* next coming, no distress of cattle shall be driven out of the hundred, rape, wapentake or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, (1) not above three miles distant from the place where the said distress is taken: And that no cattle or other goods distrained or taken by way of distress for any manner of cause at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending (2) contrary to this Act, shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages.

How much may be taken for poundage.

II. And be it further enacted by the authority aforesaid, That after the said first day of *April*, no person or persons shall take for keeping in pound, impounding or poundage of any manner of distress, above the sum of four-pence for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of five pounds, to be paid to the party grieved over and beside such money as he shall take above the sum of four-pence; any usage or prescription to the contrary in any wise notwithstanding.

The sheriff shall appoint four deputies to make replevins.

III. And for the more speedy delivery of cattle taken by way of distress, it is further enacted by the said authority, That every sheriff of shires, being no cities nor towns made shires, shall at his first county day, or within two months next after he hath received his patent of his office of sheriffwick, shall depute, appoint and proclaim in the shire-town within his bailiwick, four deputies (3) at the least, dwelling not above twelve miles, one distant from another; which said deputies so appointed and proclaimed shall have authority in the sheriff's name to

(1) Driving to the next pound in another shire does not make the party a trespasser, although it subjects him to the penalty of the statute; Gimbart *v.* Pelah, 2 Str. 1272. When lands in adjoining counties are let upon one demise, they may all be taken to a pound in either of the counties, but they cannot be driven through an intermediate county if the counties do not adjoin: Walter *v.* Rumbal, 1 Ld. Raym. 53; 1 Salk. 247. In an action for driving into another county, the venue may be laid in either county: Pope *v.* Davis, 2 Taunt. 252.

(2) An offence against this Act is satisfied by one forfeiture, although several persons be concerned; Partridge *v.* Nailor, Cro. Eliz. 480; Moore 453.

(3) The deputy is answerable for the sufficiency of the pledges as well as the sheriff; Richards *v.* Acton, 2 Bl. Rep. 1220.

make replevies and deliverance of such distresses, in such manner and form as the sheriff may and ought to do; upon pain that every sheriff for every month that he shall lack such deputy or deputies, shall forfeit for every such offence five pounds; the one half of which forfeitures shall be to the King and Queen's Highness, her heirs and successors, the other half to him that will sue for the same by bill, plaint, information or action of debt, in any the King and Queen's courts of record, in which no essoin, protection nor wager of law shall be admitted.

[No. XIV.] 1 Elizabeth, c. 19.—An Act giving Authority to the Queen's Majesty, upon the Avoidance of any Archbishopric or Bishopric, to take into her hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages impropriate and Tenths.

[Inserted Part II. Class VIII. No. 4.]

[No. XV.] 13 Elizabeth, c. 20.—An Act touching Leases of Benefices, and other Ecclesiastical Livings, with Cure.

[Inserted Part II. Class VIII. No. 6.]

[No. XVI.] 18 Elizabeth, c. 6.—An Act for Maintenance of the Colleges in the Universities, and of *Winchester* and *Eaton*.

[At length, Vol. I.]

[No. XVII.] 17 Charles II. c. 7.—An Act for a more speedy and effectual Proceeding upon Distresses and Avowries for Rents.

17 Charles II. c. 7.

'FORASMUCH as the ordinary remedy for arrearages of rents, is by distress upon the lands chargeable therewith; and yet nevertheless, by reason of the intricate and dilatory proceedings upon replevins, that remedy is become ineffectual:'

II. For remedy thereof, it is enacted by the King's most excellent Majesty, with the advice and assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That whensoever any plaintiff in replevin shall be nonsuit before issue joined (1) in any suit of replevin by plaint or writ lawfully returned, removed, or depending, in any of the King's courts at *Westminster*, that the defendant making (2) a suggestion in nature of an avowry or cognizance for such rent, to ascertain the court of the cause of distress, the court upon his prayer shall award a writ to the sheriff of the county where the distress was taken, to enquire by the oaths of twelve good and lawful men of his bailiwick, touching the

Plaintiff in replevin being nonsuit before issue joined, how the defendant may avow.

(1) The avowant, after judgment by default for want of a plea, may sue the sureties on the replevin bond, and need not proceed upon the statute; Waterman *v.* Yea, 2 Wils. 41.

(2) If the plaintiff in replevin is nonsuited, the defendant is not bound to have his damages assessed by the jury, under stat. 17 Car. 2. c. 7. or to take the earliest moment to prosecute his writ *de retorno habendo*. And he may again distrain the same goods for rent subsequently accrued, previously to his executing his *retorno habendo*, without waiving his action against the sureties in the bond; Hefford *v.* Alger, 1 Taunt. 218.

No. XVII. 17 Charles II. c. 7.

sum in arrear at the time of such distress taken, and the value of the goods or cattle distrained: And thereupon notice of fifteen days (1) shall be given to the plaintiff or his attorney in court, of the sitting of such enquiry; and thereupon the sheriff shall enquire of the truth of the matters contained in such writ, by the oaths of twelve good and lawful men of his county; And upon the return of such inquisition, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods or cattle distrained shall amount unto that value: And in case they shall not amount to that value, then so much as the value of the said goods and cattle so distrained shall amount unto, together with his full costs of suit; and shall have execution thereupon by *fieri facias* or *elegit*, or otherwise as the law shall require: And in case such plaintiff shall be nonsuit after cognizance or avowry made, and issue joined, or if the verdict shall be given against such plaintiff; then the jurors that are impanelled or returned to enquire of such issue, shall, at the prayer of the defendant, enquire concerning the sum of the arrears, and the value of the goods or cattle distrained; (2) and thereupon the avowant, or he that makes cognizance, shall have judgment for such arrearages, or so much thereof as the goods or cattle distrained amount unto, together with his full costs, and shall have execution for the same by *fieri facias* or *elegit*, or otherwise, as the law shall require. (3)

Judgment upon demurrer for the avowant.

III. And be it further enacted by the authority aforesaid, That if judgment in any of the courts aforesaid be given upon demurrer for the avowant, or him that maketh cognizance for any rent, the court shall, at the prayer of the defendant, award a writ to inquire of the value of such distress; and upon the return thereof judgment shall be given for the avowant, or him that makes cognizance as aforesaid, for the arrears alleged to be behind in such avowry or cognizance, if the goods or cattle so distrained shall amount to that value; and in case they shall not amount to that value, then for so much as the said goods or cattle so distrained amount unto, together with his full costs of suit, and shall have like execution as aforesaid.

IV. Provided always, and be it enacted, That in all cases aforesaid, where the value of the cattle distrained, as aforesaid, shall not be found to be to the value of the arrears distrained for, that the party to whom such arrears were due, his executors or administrators, may from time to time distrain again for the residue of the said arrears. [Extended to *Wales* and the counties palatine, by 19 Car. 2. c. 5.]

[No. XVIII.] 19 Charles II. c. 5.—An Act extending a former Act concerning Replevins and Avowries, to the Principality of *Wales*, and the Counties Palatine.

19 Charles II. c. 5.
17 Charles 2. c. 7.

'WHEREAS by an Act of Parliament, intituled, "An Act for the more speedy and effectual proceeding upon distresses and avow-

(1) The same notice should be given where the judgment is on demurrer; Burton *v.* Hickey, 1 Marsh. 444.

(2) This statute has taken away the writ of second deliverance: *Per Curiam*, Playters *v.* Sheering, 1 Ventr. 64. But see Cooper *v.* Sherbrooke, 2 Wils. 116; in which the execution of a writ of inquiry, after issuing a writ of second deliverance, was held regular.

(3) The verdict being for the defendant upon cognizance for rent, as to one count, and *non cepit* as to another, and giving damages, without finding the amount of the rent, or the value of the goods, the court, upon writ of error, allowed the defendant to enter judgment *pro retorno habendo* at common law, upon payment of costs; Rees *v.* Morgan, 3 T. R. 349. On a verdict for the plaintiff, with damages, not finding the amount and value, judgment for the damages and costs, and *pro retorno habendo*, although not good under this statute, is good for the damages under st. 21 Henry VIII. c. 19, *ante;* and is also good at common law, as judgment *pro retorno*, although not awarded to be irreplevisable; Gamon *v.* Jones, 4 T. R. 509. And Q. whether there can be a writ of inquiry, when the jury have found for the defendant, but omitted to find the value; Freeman *v.* Lady Archer, 2 Bl. Rep. 763.

'ries for rents," 'provision is made where any plaintiff shall be nonsuit 'before issue joined in any suit or *replevin*, by plaint or writ lawfully 'returned, removed, or depending in any of the King's courts at *West-'minster*;' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, That the said Act, and all the powers and provisions thereby made for causes of *replevins* depending in his Majesty's courts of *Westminster*, shall be extended and be of the same force and efficacy in all causes of *replevin*, which are or shall be depending in his Majesty's Court of Common Pleas for the county palatine of *Lancaster*, the courts of the great sessions of his Majesty's principality of *Wales*, the court of the great sessions or assizes for the county palatine of *Chester*, and the Court of Common Pleas for the county palatine of *Durham*, as fully and as amply for and during the continuance of the said Act, as if the said courts had been mentioned therein.

No. XVIII. 19 Charles II. c. 5.

Lancaster, Wales, Chester.

[No. XIX.] 19 Charles II. c. 6.—An Act for Redress of Inconveniences by Want of Proof of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Lives Estates do depend.

[Inserted Part II. Class II. No. 16.]

[No. XX.] 2 William and Mary, sess. 1. c. 5.—An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in a reasonable Time.

'WHEREAS the most ordinary and ready way for recovery of arrears 'of rent is by distress, yet such distresses not being to be sold, but 'only detained as pledges for enforcing the payment of such rent, the 'persons distraining have little benefit thereby:' For the remedying whereof,

2 Wm. & Mary sess. 1. c. 5.

II. Be it enacted and ordained by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *June*, in the year of our Lord One thousand six hundred and ninety, that where any goods or chattels shall be distrained for any rent reserved (1) and due upon any demise, lease, or contract whatsoever, and the tenant or owner (2) of the goods so distrained shall not, within five days (3) next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion house, or other most notorious place on the premises (4) charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, (5) the person distraining shall and may,

Goods distrained for rent may be appraised and sold.

(1) This statute evidently extends only to rents reserved upon lease or contract. The statute 4 George II. c. 28. s. 5, which gives a power to distrain for rents and entry, rents of assize and chief rents, also contains a power of sale. The Irish statute 25 Geo. II. c. 13, gives a power of sale in case of distress for rent services, fee farm rents, or rent charges. This is not provided for by any English statute, except so far as the term chief rents in 4 Geo. II. may be supposed to include rents services and fee farm rents.

(2) The owner of the goods, to whom notice has been given, cannot object that notice has not been given to the tenant of the land; Walter *v.* Rumbal, 1 Lord Raym. 53.

(3) This is construed inclusive, so that goods distrained on Saturday morning may be sold on Thursday afternoon; Wallace *v.* King, 1 H. B. 13.

(4) This is not necessary, if personal notice is given to the party; Walter *v.* Rumbal, 1 Lord Raym. 53.

(5) In Griffin *v.* Scott, 2 Ld. Raym. 1424; Str. 717, it was ruled that trespass might be maintained for suffering the goods (in cases not provided for by the Act) to remain on the premises an unreasonable time, after the five

No. XX. 2 W. & M. sess. 1. c. 5.

with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish, or place, (1) where such distress shall be taken (who are hereby required to be aiding and assisting therein), cause the goods and chattels so distrained to be appraised (2) by two sworn appraisers (whom such sheriff, under-sheriff, or constable, are hereby empowered to swear) to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell (3) the goods and chattels so distrained for the best price can be gotten for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff, or constable, for the owner's use.

Corn loose, &c. may be detained and sold.

'III. And whereas no sheaves or cocks of corn loose or in the straw, 'or hay in any barn, or granary, or on any hovel, stack, or rick, can by 'the law be distrained, or otherwise secured for rent, whereby landlords 'are oftentimes cousened and deceived by their tenants, who sell their 'corn, grain, and hay to strangers, and remove the same from the pre-'mises chargeable with such rent, and thereby avoid the payment of 'the same;' be it further enacted by the authority aforesaid, That for remedying the said practice and deceit, it shall and may, from and after the said first day of *June*, be lawful to and for any person or persons having rent arrear and due upon any such demise, lease, or contract, as aforesaid, to seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land or ground charged with such rent, and to lock up or detain the same in the place where the same shall be found, for or in the nature of a distress, until the same shall be replevied upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same after such appraisement thereof to be made; so as nevertheless such corn, grain, or hay so distrained as aforesaid, be not removed by the person or persons distraining, to the damage of the owner thereof, out of the place where the same shall be found, and seized, but be kept there (as impounded) until the same shall be replevied, or sold in default of replevying the same within the time aforesaid. (4)

Treble damages for pound-breach.

IV. And be it further enacted by the authority aforesaid, That upon any pound-breach or rescous of goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action upon the case (5) for the wrong thereby sustained, recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound-breach, any or either of them, or against the owners of the goods distrained, in case the same be afterwards found to have come to his use or possession. (6)

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days, and that three days was an unreasonable time; see st. 11 Geo. II. c. 19, *post.*, sect. 10, and Winterbourne *v.* Morgan, 11 E. 395.

(1) Where the premises lay partly in the hundred of Andover, and partly in the hundred of Kinalsey, and the goods were all impounded in Kinalsey, the constable of Kinalsey was the proper officer to administer the oath for the appraisement of the whole distress; Walter *v.* Rumbal, 1 Ld. Raym. 53. Q. If goods taken in one parish can be appraised by a constable of a different parish in the same hundred; *semble* not; Wallace *v.* King, 1 H. B. 13.

(2) The goods, although appraised, may be replevied after the five days, unless actually sold; Jacob *v.* King, 1 Marsh. 135.

(3) *Semble* this provision does not authorize distraining things which were previously exempt; Gorton *v.* Falkner, 4 T. R. 565. The money produced by the sale vests in the first instance in the landlord, therefore a sub-tenant, whose goods are distrained and sold by the original landlord, cannot maintain *assumpsit* against the immediate tenant for money paid to his use; Moore *v.* Pyrke, 11 E. 52.

(4) If standing corn is sold under an execution, and afterwards cut by the vendee, it cannot be distrained before it is fit to be carried; Gilb. Distr. (3d Ed.) 50. *Secus*, where it is permitted to remain after severance; *semble* Parslow *v.* Cripps, Com. Rep. 203; but N. B., the report only purports to contain the argument of counsel, without stating any decision.

(5) It is no answer to such action that the rent, &c. was tendered after the impounding; Firth *v.* Purvis, 5 T. R. 432.

(6) The Irish statute 8 Geo. I. c. 2. contains some salutary provisions, giving a summary jurisdiction to justices of peace in case of rescue of a distress.

V. Provided always, and be it further enacted, That in case any such distress and sale as aforesaid, shall be made by virtue or colour of this present Act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person or persons distraining, or to him or them in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any or either of them, his or their executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

No. XX. 2 W. & M. sess. 1. c. 5.

Double damages and costs against wrongful distrainer.

[No. XXI.] 8 Anne, c. 14.—An Act for the better Security of Rents, and to prevent Frauds committed by Tenants.

8 Anne, c. 14.

FOR the more easy and effectual recovery of rents reserved on leases for life or lives, term of years, at will or otherwise; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same, That from and after the first day of *May*, which shall be in the year of our Lord One thousand seven hundred and ten, no goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, (1) shall before the removal (2) of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord (3) of the said premises or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time (4) of the taking such goods or chattels by virtue of such execution; Provided the said arrears of rent do not amount to more than one year's rent; (5) and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord or his bailiff, one year's rent, may proceed to execute his judgment, as he might have done before the making of this Act; and the sheriff or other officer (6) is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money. (7)

After the first of May, 1710, no goods, &c. shall be taken in execution, &c. unless the party before removal of the goods, &c. pay the landlord the rent due.

(1) The Act extends to an execution at the suit of a defendant for costs, notwithstanding the direction at the end of the section that the sheriff shall pay the *plaintiff* as well the rent as the execution money; Henchett *v.* Kimpson, 2 Wils. 140.

(2) A bill of sale ruled to be a removal; West *v.* Hedges, Barnes, 211.

(3) The statute only extends to the immediate landlord, not to a ground landlord; Master Bennet's case, 2 Str. 787. An executor or administrator is entitled to the benefit of the statute, as to arrears accrued in the lifetime of the deceased; Palgrave *v.* Windham, 1 Str. 212.

(4) The Act does not extend to rent which accrues during the continuance of the sheriff in possession; Hoskins *v.* Knight, 1 M. and S. 245. And a sheriff taking corn in the blade under a *fieri facias*, and selling it before rent due, is not liable to account to the landlord of the defendant, under the statute 8 Anne, for rent accruing subsequently to the levy and sale, although he has given notice, and though the corn be not removed from the premises until long afterwards, when a considerable proportion of rent has become due, the landlord's remedy in such case is by distress; Gwillim *v.* Barker, 1 Price, 274. And the landlord of premises on which goods have been seized under an extent in aid, is not entitled, under the 8 Anne, to call on the sheriff to pay twelve months' rent, due before the teste of the writ; Rex *v.* Decaux, 2 Price, 17.

(5) Only one year's rent is to be paid, although there be two executions; *semble* Dod *v.* Saxby, 2 Str. 1024.

(6) The bailiff of a liberty is subject to the provisions of the Act; Palgrave *v.* Windham, 1 Str. 212.

(7) In order to render the sheriff responsible for non-compliance with the Act, there must be a demand for the rent, before the removal, by the party entitled; and a demand by a person to whom administration is afterwards committed does not operate by relation; Waring *v.* Dewberry, 2 Str. 97: see Smith *v.* Russell, 3 Taunt. 400. And *semble*, that a sheriff is not

No. XXI. 8 Anne, c. 14.

If any lessee, &c. shall fraudulently carry off goods, &c. the lessor, &c. may within five days after seize such goods, &c. and sell the same as if they had been distrained.

II. And be it further enacted by the authority aforesaid, That in case any lessee for life or lives, term of years, at will or otherwise, of any messuages, lands, or tenements, upon the demise whereof any rents are or shall be reserved, or made payable, shall, from and after the said first day of *May*, fraudulently or clandestinely convey or carry off or from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor, from distraining the same for arrears of such rent so reserved as aforesaid, it shall and may be lawful to and for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within the space of five days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of such rent; and the same to sell or otherwise dispose of, in such manner, as if the said goods and chattels had actually been distrained by such lessor or landlord, in and upon such demised premises for such arrears of rent; any law, custom, or usage to the contrary in any wise notwithstanding.

Proviso, such lessor, &c. shall not seize any goods, &c. which shall be *bona fide* sold before.

III. Provided nevertheless, That nothing in this Act contained shall extend, or be construed to extend to empower such lessor or landlord to take or seize any goods or chattels as a distress for arrears of rent, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made; any thing herein contained to the contrary notwithstanding.

Debt may be brought against tenant for life for rent.

'IV. And whereas no action of debt lies against a tenant for life or 'lives, for any arrears of rent, during the continuance of such estate 'for life or lives;' Be it enacted by the authority aforesaid, That from and after the said first day of *May* it shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise (1) for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as they might have done, in case such rent were due and reserved upon a lease for years.

Distresses liable to such sales, and to be distributed, as by the Act 2 W. and M. s. 1. c. 5.

V. And it is hereby further enacted and declared by the authority aforesaid, That all distresses hereby empowered to be made as aforesaid, shall be liable to such sales, and in such manner, and the monies arising by such sales to be distributed in like manner, as by an Act made in the second year of the reign of their late Majesties King *William* and *Queen Mary*, intituled, "An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in reasonable Time," is in that behalf directed and appointed.

Rent in arrear upon a lease for life, &c. expired, may be distrained for after the determination of the lease.

'VI. And whereas tenants *pur auter vie*, and lessees for years or at 'will, frequently hold over the tenements to them demised, after the 'determination of such leases: And whereas after the determination of 'such, or any other leases, no distress can by law be made for any arrears 'of rent that grew due on such respective leases before the determina-'tion thereof;' it is hereby further enacted by the authority aforesaid, That from and after the said first day of *May* One thousand seven hundred and ten, it shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as

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bound to find out what rent is due to a landlord, and pay it him, under 8 Anne, c. 14, unless the landlord give him notice; Smith *v.* Russell, 4 Taunt. 400. In case of removal contrary to the Act, the landlord may maintain an action: in such action the want of alleging a demand is helped by verdict; Palgrave *v.* Windham, 1 Str. 212. It is not necessary to state in the declaration, the particulars of the lease: but if they are stated, and there is any variance, it is fatal; Bristow *v.* Wright, Doug. 665. The court from which the execution issues will also give relief on summary application; West *v.* Hedges, Barnes, 211; Twells *v.* Colville, Willes 377; Henchett *v.* Kimpson, 2 Wils. 140. If the execution is overreached by an Act of bankruptcy and commission, the sheriff, in an action by the assignees, can only avail himself of payment to the landlord, by proving that it was made before notice of the commission issued; Lee *v.* Lopes, 15 E. 230.

(1) This only extends to cases between landlord and tenant. A devisee of an annuity cannot maintain debt against the devisee of the land; Webb *v.* Jiggs, 4 M. and S. 113.

they might have done, if such lease or leases had not been ended or determined.

VII. Provided, That such distress be made within the space of six calendar months (1) after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant (2) from whom such arrears became due.

Distress to be within six months after the end of the lease, and during the landlord's title and tenant's possession.

VIII. Provided always, and it hereby enacted and declared by the authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to let, hinder, or prejudice her Majesty, her heirs or successors, in the levying, recovering, or seizing any debts, fines, penalties, or forfeitures, that are or shall be due, payable, or answerable to her Majesty, her heirs or successors; but that it shall and may be lawful for her Majesty, her heirs and successors, to levy, recover, and seize such debts, fines, penalties, and forfeitures, in the same manner as if this Act had never been made; any thing in this Act contained to the contrary thereof in any wise notwithstanding.

This Act shall not hinder the Queen, &c. to levy, &c. any debts, fines, &c. due to the crown.

[No. XXII.] 4 George II. c. 28.—An Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents, and Renewal of Leases.

4 George II. c. 28.

FOR securing to lessors and land owners their just rights, and to prevent frauds frequently committed by tenants, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in case any tenant or tenants for any term of life, lives or years, or other person or persons, who are or shall come into possession of any lands, tenements, or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully (3) hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made, and notice in writing (4) given, for delivering the possession thereof, by his or their landlords or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his or their agent (5) or agents thereunto lawfully authorized; then and in such case such person or persons so (6) holding over, shall, for and during the time he, she, and they shall so hold over, or keep the person or persons intitled (7) out of possession of the said lands, tenements, and hereditaments, as aforesaid, pay to the person or persons so kept out of possession, their executors, administrators or

Personsholding over lands, &c. after expiration of leases to pay double the yearly value.

(1) The distress may be made during the possession of the executor of the tenant, for the rent accrued in the life of his testator; Braithwaite *v.* Cooksey, 1 H. B. 465.

(2) A distress may be made after the expiration of the six months during the time that the tenant, according to the custom of the country, has the way-going crop on the premises; Bevan *v.* Delahay, 1 H. B. 5; Lewis *v.* Harris, n. ibid.

(3) A tenant holding over under a fair claim of right is not within the Act, although it be decided eventually that he has no right; Wright *v.* Smith, 5 Espinasse, 203.

(4) The notice to quit, given previous to the expiration of the term, is a sufficient demand; Cutting *v.* Derby, 2 Bl. 1074; Wilkinson *v.* Colley, 5 Bur. 2694: and the right to recover thereon is not waved by giving a second notice after the expiration of the first; Messenger *v.* Armstrong, 1 T. R. 53. A notice to quit, "or I shall insist upon double rent," does not give the tenant an option to continue the possession, paying double rent; Doe dem. Matthews *v.* Jackson, Doug. 175.

(5) A receiver appointed by the Court of Chancery in a suit depending is a sufficient agent to give notice; Wilkinson *v.* Colley, 5 Bur. 2694.

(6) If the notice is given to a woman who afterwards marries, the action for not delivering up possession may be maintained against the husband, without any new demand, and the wife need not be joined; Lake *v.* Smith, 1 N. R. 174.

(7) An administratrix of an executor cannot sustain an action on this Act, although the tenant has attorned to her without taking administration, *de donis non*, to the first testator; Tingrey *v.* Brown, 1 B. and P. 310.

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assigns, at the rate of double the yearly value (1) of the lands, tenements, and hereditaments so detained, for so long time as the same are detained, to be recovered in any of his Majesty's Courts of Record, by action of debt, (2) whereunto the defendant or defendants shall be obliged to give special bail, against the recovering of which said penalty there shall be no relief in equity. (3)

'II. And whereas great inconveniences do frequently happen to lessors 'and landlords, in cases of re-entry for nonpayment of rent, by reason of 'the many niceties that attend the re-entries at common law; and forasmuch as when a legal re-entry is made, the landlord or lessor must be at 'the expense, charge, and delay, of recovering in ejectment, before he 'can obtain the actual possession of the demised premises; and it often 'happens that after such a re-entry made, the lessee or his assignee, 'upon one or more bills filed in a court of equity, not only holds out 'the lessor or landlord by an injunction, from recovering the possession, 'but likewise, pending the said suit, do run much more in arrear, without giving any security for the rents due, when the said re-entry was 'made, or which shall or do afterwards incur:' For remedy whereof, be it enacted by the authority aforesaid, That in all cases between landlord and tenant, from and after the twenty-fourth day of *June* One thousand seven hundred and thirty-one, as often as it shall happen that one-half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry and ouster, it shall be made appear to the court where the said suit is depending, by affidavit, (4) or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress (5) was to be found

One half a year's rent in arrear, landlord may re-enter, serving a declaration of ejectment.

(1) For the distinction between this Act and 11 Geo. II. c. 19. subjecting the tenant giving notice to quit to double rent, see 3 Burr. 2698.

(2) One tenant in common may maintain this action against the defendant, who, after regular notice to quit his moiety, had turned off the plaintiff's sheep; Cutting *v.* Derby, 2 Bl. Rep. 1175. It by no means follows, that the action could be maintained in such a case against a defendant for merely retaining possession; which (being himself tenant in common in respect of the other moiety) he is intitled to do. In an action for double value, and also for use and occupation, the defendant paid the single rent into Court upon the latter count, and the plaintiff by taking it out was held not to wave his right under the former, so as to be subject to nonsuit thereon, but that the case ought to have gone to the jury; Ryal *v.* Rich, 10 E. 48. The action for double value may be brought after a judgment in ejectment, for the holding over down to the time of recovering the possession; Soulsby *v.* Nevin, 9 E. 310.

(3) This section is copied, with some slight variations, from the Irish Statute 11 Anne, c. 2. sec. 1. See 1 Gabbett, 468.

(4) In Doe *v.* Lewis, 1 Burr. 614, the lessor having recovered in a former ejectment under this Act, the lessee, after a lapse of several years, brought a second ejectment on the title of his lease; and the proceedings in the first ejectment being in all other respects confessedly regular, he insisted that he was intitled to recover, because no affidavit was produced which had been made in conformity to the Act: and the Court held that it was not incumbent on the landlord to prove the regularity of all the circumstances upon which his judgment and execution were founded; but that the judgment must be taken to have been a right, regular and good one, as nothing appeared to the contrary.

(5) Where the rent became due on the 25th of March, the demise was laid on the 2d of May, it appeared that there was no sufficient distress on *some* day in May (the particular day being left uncertain) and the declaration served on the 6th of June, no evidence being given by the defendant to repel the inference of there being no sufficient distress, by shewing

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on the demised premises countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; (1) then and in every such case the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on such ejectment and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed; then and in such case the said lessee or lessees, his, her, or their asssignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error, for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the defendant or defendants not confessing lease, entry and ouster, then in every such case such defendant or defendants shall have and recover, his, her, and their full costs: Provided always, That nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.

When lessor in ejectment may recover judgment, &c.

Not to bar the right of any mortgagee.

III. And be it further enacted by the authority aforesaid, That in case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons claiming any right, title or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills, for relief in any court of equity, such person or persons shall not have or continue any injunction, against the proceedings at law on such ejectment, unless he, she, or they do or shall, within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court,

Lessees filing bill in equity, not to have an injunction against proceeding at law, &c.

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a sufficient distress up to the day of the demise, or on the 6th of June (supposing that to be necessary) the case of the plaintiff, as to there being no sufficient distress, was held to be sufficiently proved to bring the case within the Act; Doe *v.* Smelt, 15 E. 286.

(1) An ejectment can only be maintained under the statute in case there is no distress, or at common law in case a demand is made on the day, with all requisite formalities; Doe d. Forster *v.* Wandlass, 7 T. R. 117. It is not necessary to make any demand in order to entitle a plaintiff to recover in a case brought in other respects within the Act, although the proviso for re-entry be expressed to be in case of the rent being in arrear *(being lawfully demanded)*; Doe d. Scholfield *v.* Alexander, 2 M. and S. 525. When, by the terms of the lease, there is a proviso for re-entry in case of non-payment, although not lawfully demanded, an ejectment may be maintained without reference to the statute, the demand being dispensed with by the express terms of the lease; and by Lord Mansfield—"The Act of 4 Geo. II. is very perplexed: but the meaning certainly only is, that where there is no stipulation in the lease for entry without demand, you may notwithstanding enter without demand, provided six months' rent is in arrear, and there is not a sufficient distress; otherwise, in such cases you must make a demand;" Goodright d. Hare *v.* Cater, Doug. 478. It is always desirable that the proviso should be for re-entry, although the rent be not demanded, and that no mention should be made of there being no sufficient distress; and this would be no essential prejudice to the lessee, as in case there is a sufficient distress, it could be disposed of to the most advantage under his own directions, and there can be no doubt that he would be relieved from the forfeiture, *if not at law, at least in equity*, by payment according to the terms of the Act. In Doe d. West *v.* Davis, 7 E. 363, it seems to be held, that the want of sufficient distress was not requisite in order to bring a case within the statute. But the report is in this respect not very clear; and the supposed doctrine seems contrary both to the case of Doe *v.* Wandlass, and to the express language of the Act.

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and lodge with the proper officer such sum and sums of money as the lessor or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much and no more, as he, she, or they shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his, her, or their entering into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.

Tenant paying all rent with costs proceedings to cease.

IV. Provided always, and be it further enacted by the authority aforesaid, That if the tenant or tenants, his, her, or their assignee or assignees, do or shall at any time before the trial (1) in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued: and if such lessee or lessees, his, her, or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.

Method of recovering seck rents, &c.

'V. And whereas the remedy for recovering rents seck, rents of assize 'and chief rents, are tedious and difficult,' Be it therefore enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* One thousand seven hundred and thirty one, all and every person or persons, bodies politic and corporate, shall and may have the like remedy by distress, and by impounding and selling the same, in cases of rents seck, rents of assize and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty years (2) before the first day of this present session of Parliament, or shall be hereafter created, as in case of rent reserved upon lease; any law or usage to the contrary notwithstanding.

Chief leases maybe renewed without surrendering all the under-leases.

'VI. And whereas many persons hold considerable estates by leases 'for lives or years, and lease out the same in parcels to several under-'tenants: And whereas many of those leases cannot by law be renewed 'without a surrender of all the under-leases derived out of the same, so 'that it is in the power of any such under-tenants to prevent or delay 'the renewing of the principal lease, by refusing to surrender their 'under-leases, notwithstanding they have covenanted so to do, to the 'great prejudice of their immediate landlords the first lessees:' For preventing such inconveniencies, and for making the renewal of leases more easy for the future, Be it enacted by the authority aforesaid, That in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall without a surrender of all or any the under-leases be as good and valid to all intents and purposes as if all the under-leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall from time to time be vested by virtue of such new lease, and his, her, and their executors and ad-

(1) The Court refused to relieve after trial; Doe d. West *v.* Davis, 7 E. 363.

(2) See Bradbury *v.* Wright, Doug. 627.

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ministrators, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the messuages, lands, and tenements in the respective under-leases comprised, as if the original leases, out of which the respective under-leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have and be entitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments comprized in any such under-lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such under-lease was derived, as they would have had in case such former lease had been still continued, or as they would have had in case the respective under-leases had been renewed under such new principal lease; any law, custom or usage to the contrary hereof notwithstanding.

VII. Provided always, That nothing in this Act contained shall extend to that part of *Great Britain* called *Scotland*.

Not to extend to Scotland.

[No. XXIII.] 11 George II. c. 19.—An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants.

11 George II. c. 19.

'WHEREAS the several laws heretofore made for the better security of rents, and to prevent frauds committed by tenants, have not proved sufficient to obtain the good ends and purposes designed thereby, but rather the fraudulent practices of tenants, and the mischief intended by the said Acts to be prevented, have of late years increased, to the great loss and damage of their lessors or landlords;' For remedy whereof, may it please your most excellent Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, in the year of our Lord One thousand seven hundred and thirty-eight, in case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his, (1) her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable; (2) it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of *Great Britain* called *England*, dominion of *Wales*, or the town of *Berwick-upon-Tweed*, or any person or persons by him, her, or them, for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises, for such arrears of rent; any law, custom, or usage to the contrary in any wise notwithstanding.

Preamble.

Landlords may distrain and sell goods fraudulently carried off the premises within thirty days, unless sold to any person not privy to the fraud.

II. Provided always, That no landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bonâ fide*, and for

(1) The stat. 11 Geo. II. c. 19., empowering landlords to follow goods fraudulently and clandestinely carried off the premises within thirty days, applies to the goods of the tenant only, and not to those of a stranger: wherefore, a plea justifying the following goods off the premises, and distraining them for rent arrear, must shew that they were the tenant's goods; Thornton *v.* Adams, 5 M. & S. 38.

(2) In order to justify the landlord distraining under this Act, the removal must have taken place after the rent became due, and must have been secret, and not open and in the face of day; Watson *v.* Mann, 3 Esp. Rep. 16.

No. XXIII. 11 Geo. II. c. 19.

a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid; any thing herein contained to the contrary notwithstanding.

Penalty on the said fraud, or assisting thereto.

III. And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting therein, or concealing the same; Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or (1) in concealing the same; all and every person and persons so offending, shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods (2) by him, her, or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any of his Majesty's courts of record at *Westminster*, or in the courts of session in the counties palatine of *Chester*, *Lancaster*, or *Durham* respectively, or in the courts of grand sessions in *Wales*, wherein no essoin, protection, or wager of law shall be allowed, nor more than one imparlance.

If the goods exceed not the value of 50*l.* landlords to have recourse to two justices.

IV. Provided always, and be it enacted by the authority aforesaid, That where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of fifty pounds, it shall and may be lawful for the landlord or landlords from whose estate such goods or chattels were removed, his, her, or their bailiff, servant, or agent, in his, her, or their behalf, to exhibit a complaint in writing (3) against such offender or offenders, before two or more justices of the peace of the same county, riding, or division of such county, residing near the place whence such goods and chattels were removed, or (4) near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, or if any such witness be one of the people called Quakers, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence, with which he or they are charged; and to enquire in like manner of the value of the goods and chattels by him, her, or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order (5) under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his, her, or their bailiff, servant, or agent, at such time as the said justices shall appoint: And in case the offender or offenders, having notice of such order, shall refuse or neglect so to do, may and shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders: and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour without bail or mainprize

(1) In Rex *v.* Middlehurst, 1 Bur. 399, an order of justices, founded upon the next section, for assisting in fraudulently removing OR concealing, was held good.

(2) In an action founded upon this provision, a variance in stating the amount of the rent in arrear is not material; Gwinet *v.* Philips, 3 T.R. 643.

(3) It need not be upon oath; Rex *v.* Bissex, Burn, tit. *Distress*.

(4) If goods are removed from one county into another, the proceeding may be before justices of either; *semble* Rex *v.* Morgan, Caldec. 156.

(5) In Rex *v.* Bissex, Burn, tit. *Distress*, it was ruled that a proceeding under this Act is an order, and not a conviction; and that therefore it was not necessary to set out the evidence; and several particular objections to the form of the order, in respect of the particulars necessary to be stated, were overruled. Upon the same distinction between an order and a conviction, it was ruled in the case of Rex *v.* Middleton, mentioned in the note to the last section, that the offence might be set out disjunctively; but in Rex *v.* Morgan, Caldec. 156, the proceeding seems to be treated as a conviction.

for the space of six months, unless the money so ordered to be paid as aforesaid, shall be sooner satisfied.

Appeal from them to the quarter sessions.

V. Provided also, That it shall and may be lawful for any person, who thinks himself aggrieved by such order of the said two justices, to appeal to the justices of peace at their next general or quarter sessions to be held for the same county, riding, or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final.

The two justices' order on such appeal, not to be executed.

VI. Provided also, That where the party appealing shall enter in a recognizance with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such general or quarter sessions, the order of the said two justices shall not be executed against him in the mean time.

Landlords may break open houses to seize goods fraudulently secured therein;

VII. And be it further enacted by the authority aforesaid, That where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance, the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district or place, where the same shall be suspected to be concealed, who are hereby required to aid and assist therein: and in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day-time, to break open and enter into such house, barn, stable, out-house, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former Act, if such goods and chattels had been put in any open field or place.

and may distrain stock or cattle on the premises, for arrears of rent.

VIII. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* which shall be in the year of our Lord One thousand seven hundred and thirty-eight, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver or other person or persons empowered by him, her or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants, feeding or depasturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever (1) which shall be growing on any part of the estates so demised or holden, as a distress for arrears of rent; and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns, or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises; and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chat-

(1) Trees growing in a nurseryman's ground, who was a yearly tenant to the plaintiffs, and removable, by such tenant from time to time, are not distrainable for rent, under sect. 8. Clark v. Calvert, 3 Moore, 96.

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tels may be seized, distrained and disposed of; and the appraisement thereof to be taken when cut, gathered, cured and made, and not before.

Tenants to have notice of the place where the distress is lodged.

IX. Provided always, That notice of the place where the goods and chattels so distrained shall be lodged or deposited, shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode; and that if after any distress for arrears of rent so taken, of corn, grass, hops, roots, fruits, pulse, or other product, which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay, or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rent of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby; that then, and upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease; and the corn, grass, hops, roots, fruits, pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators or assigns; any thing hereinbefore contained to the contrary notwithstanding.

Distress of corn, &c. to cease, if rent be paid before it be cut.

'X. And whereas great difficulties and inconveniences frequently 'arise to landlords and lessors and other persons taking distresses for 'rent, in removing the goods and chattels or stock distrained off the 'premisses, in cases where by law they may not be impounded and se-'cured thereupon; and also to the tenants themselves many times, by 'the damage unavoidably done to such goods and chattels, or stock, in 'the removal thereof;' Be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-eight, it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound, or otherwise secure the distress so made, of what nature or kind soever it may be, in such place, or on such part(1) of the premisses chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress: and to appraise, sell and dispose of the same upon the premisses, in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do off the premisses, by virtue of an Act made in the second year of the reign of King *William* and Queen *Mary*, intituled, "An Act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time;" or of one other Act made in the fourth year of his present Majesty, intituled, "An Act for the more effectual preventing frauds committed by tenants, and for the more easy recovery of rents, and renewal of leases;" and that it shall and may be lawful to and for any person or persons whatsoever, to come and go to and from such place or part of the said premisses, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise and buy, and also in order to carry off or remove the same, on account of the purchaser thereof; and that if any pound-breach or rescous shall be made of any goods or chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have the like remedy, as in cases of pound-breach or rescous is given and provided by the said statute.(2)

Distresses may be secured, and sold on the premisses.

2 W. & M. c. 5.

4 Geo. 2. c. 28.

(1) See Washborn *v.* Black, 11 E. 405, n. in which the law was admitted to be, that without consent the distrainer ought either to have put the goods all into one room, and kept possession of that only, or to have removed the goods out of the house: but very slight evidence was admitted of consent.

(2) The right of replevin is not taken away by appraisement or removal after the five days allowed, until actual sale; Jacobs *v.* King, 5 Taunt. 451.

'XI. And whereas the possession of estates in lands, tenements and 'hereditaments is rendered very precarious by the frequent and fraudu- 'lent practice of tenants, in attorning to strangers, who claim title to 'the estates of their respective landlord or landlords, lessor or lessors, 'who by that means are turned out of possession of their respective 'estates, and put to the difficulty and expense of recovering the pos- 'session thereof by actions or suits at law;' For remedy thereof be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* in the year of our Lord, One thousand seven hundred and thirty-eight, all and every such attornment and attornments of any tenant or tenants of any messuages, lands, tenements or hereditaments, within that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered or affected by any such attornment or attornments: Provided always, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

Attornment of tenants, void.

Exception.

'XII. And whereas great inconveniences have frequently happened 'to landlords by their tenants secreting declarations in ejectment, which 'have been delivered to them, or by refusing to appear to such eject- 'ments, or to suffer their landlords to take upon them the defence 'thereof,' Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, one thousand seven hundred and thirty-eight, every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements or hereditaments, in that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick-upon-Tweed*, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff or receiver, under penalty of forfeiting the value of three years(1) improved or rack rent(2) of the premisses so demised or holden in the possession of such tenant, to the person of whom he or she holds: to be recovered by action of debt to be brought in any of his Majesty's Courts of Record at *Westminster*, or in the counties palatine of *Chester*, *Lancaster*, and *Durham* respectively, or in the courts of Grand Sessions in *Wales*; wherein no essoin, protection or wager of law shall be allowed, nor any more than one imparlance.(3)

Against tenants secreting ejectments.

(1) Where the master having taxed single costs, a motion was made on stat. 11 Geo. II. c. 19, s. 12, that treble costs might be allowed, the statute having given treble the rent as damages, the Court observed that the statute had not given treble damages, but only directed how single damages should be ascertained, refused the rule; Croker *v.* Fothergill, 2 B. & A. 662, n.

(2) Demise of certain lands together with the mines under them, with liberty to dig for ore in other mines under the surface of other lands not demised. The tenant fraudulently concealed a declaration in ejectment delivered to him, and suffered judgment to go by default. The declaration in ejectment did not mention mines at all; but the sheriff, by the concurrence of the tenant, delivered possession of the premises demised to the tenant, and also of those mines in which he had only liberty to dig; Held, that although the latter could not be recovered under the declaration in ejectment, still that the tenant by his own act had estopped himself from taking that objection, and that in an action for the value of three years' improved rent, under the Statute of 11 Geo. II. c. 19, the landlord might recover the treble rent in respect not only of the demised premises, but of the mines in which the tenant had only a liberty to dig. The improved or rack-rent, mentioned in the 11 Geo. II. c. 19, s. 12, is not the rent reserved, but such a rent as the landlord and tenant might fairly agree on at the time of delivering the declaration in ejectment, in case the premises were then to be let; Croker *v.* Fothergill, 2 B. & A. 652.

(3) In Buckley *v.* Buckley, 1 T. R. 147, it was held that this clause did not apply to the case of a tenant to whom an ejectment had been delivered at the suit of the mortgagee of the landlord. The Court said that the statute only extended to cases where ejectments were brought, which were inconsistent with the landlord's title. They observed likewise that the ejectment was brought for the purpose of compelling the tenant to attorn to the mort-

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Landlord empowered to make himself defendant by joining with the tenants, &c.

XIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords to make him, her or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he or they shall appear: but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule that by the course of the court the tenant in possession in case he or she had appeared ought to have done; then the court where such ejectment shall be brought shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. (1)

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gagee, which the Act expressly permitted him to do. The notion of ejectments for the purpose of compelling tenants to attorn is materially altered since this decision.

(1) It appears by the case of Fairclaim ex dem. Fowler *v.* Shamtitle, 3 Burr. 1290, that a practice had prevailed of admitting landlords to defend previous to this statute, and several cases of the kind are referred to in Adams's Treatise on Ejectments, Chap. 8, the questions in which related to the particular character of the parties applying to be admitted. In the first case on the subject, Roe d. Lock *v.* Doe, Barnes 193, the question was between different devisees claiming under conflicting wills of the lessor, and it was held that the Court had no jurisdiction to admit any person to defend an ejectment instead of the defendant, except the landlord only; and who, it is said, is a landlord within the Act; not every person claiming title, but one who is in some degree of possession, one receiving rent, &c.: the clause of forfeiture by a tenant, if he does not give notice of declaration to his landlord, proves this.

In Adams on Ejectment this doctrine is said to have been reprobated by Lord Mansfield, in the case of Fairclaim and Shamtitle above alluded to; but I do not see that there any such disapprobation is particularly expressed; and I apprehend that the principle of the decision in Roe *v.* Doe is that which now prevails in practice, although some of the expressions are not literally correct; and that where there is a valid and undisputed demise, the question as to which of two adverse claimants is entitled to stand in the character of landlord, and to receive the rents, cannot in any case be tried in ejectment. In Fairclaim *v.* Shamtitle, the ejectment was brought by a person claiming as heir; and the lords of the manor, claiming by escheat *pro defectu hæredis*, applied to be admitted as landlords. After much discussion, it was entered by consent, that the lord of the manor should bring an ejectment, which the person claiming as heir should defend. Lord Mansfield, after the rule had been drawn up, declared that he was clear that "that method was the proper way of trying the right upon the merits: if there was really no heir, then the lord stood in the place of the deceased; but f there was any heir whatsoever, the lord's claim was at an end. The Court would have obliged him to come into some method of trying the right in a proper issue; and that method into which it was now put (his bringing an ejectment) was the most proper issue for the purpose. If the heir had refused, the Court would have permitted the lord to defend, which would have given him the benefit of possession. If the lord had refused to consent, the Court would have discharged the rule. For certainly, when the sole question turns upon who ought to be the landlord to the tenant in possession, he should stand neuter, and his possession avail neither: the question ought to be tried between the claimants. The plaintiff must consent, else the other is admitted to defend: the other must consent, because to say that he is landlord begs the question intended to be tried." —For a reason already stated, it seems clear that this view of the subject cannot now prevail, whatever other course may be taken in order to decide the question of title.

In Lovelock d. Norris *v.* Doncaster, 3 T. R. 783, an application to defend as landlord being made on behalf of devisees, which was opposed on the ground of their having never been in possession, Lord Kenyon said—"If the person requiring to be made defendant under the Act had stood in the situation of immediate heir to the person last seized, or had been in the relation of remainder-man under the same title as the original landlord, I am of opinion that he might have been permitted to defend as landlord by virtue of the directions of the statute; but here the very question in dispute between the adverse party and himself is, whether he is entitled to be landlord or not? and therefore we are not authorized to extend the provisions of the statute to such a case as this."

In Doe on the demise of Hebblethwaite and others *v.* Roe, cited in a note to the preceding case, the court permitted an heir who had never been in possession to come in and defend an ejectment. The father under whom he claimed died just before, having first obtained a similar rule. But in this case the ejectment seems to have been brought by a person claiming by title paramount to that of the person who made the lease, and not to involve any

Rents how to be recovered, where the demises are not by deed.

XIV. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case,(1) for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed)(2) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered.(3)

question between parties respectively claiming under the admitted title of the same lessor.—In Doe d. Tilyard *v.* Cooper, 8 T. R. 645, the mortgagee was admitted to defend jointly with the mortgagor; but this case cannot be considered as arising upon the statute, which applies only to the relation of landlord and tenant.

(1) The action may be in debt; Wilkins *v.* Wingate, 6 T. R. 62; Stroud *v.* Rogers, n. ibid. The action of debt does not depend upon this statute; Barnard *v.* Duthy, 5 Taunt. 27.

(2) Assumpsit will lie for use and occupation, although there is an agreement under seal, if such agreement contain no words of present demise; Elliott *v.* Rogers, 4 Esp. 59. But *semble* this could not be admitted if there were any actual covenant for payment of the rent. —Ed.

(3) The action may be maintained by a grantee of an annuity (who does not differ from any other grantee of the lessor, and therefore the proposition may be stated as to grantees generally, who have recovered in ejectment) against a tenant from year to year, for all rent in his hands (which has accrued due subsequent to the grant) at the time of notice by the grantee, and down to the demise in the ejectment; Birch *v.* Wright, 1 T. R. 378. It may be maintained by the trustees of one, of whose title the defendant had notice of before payment to the original landlord, although he had not notice of the legal title of the trustees; Lumley *v.* Hodgson, 16 E. 99. Against a lessee, who permits another person to occupy; Bull *v.* Sibbs, 8 T. R. 327. Against a tenant who has become bankrupt, notwithstanding his bankruptcy, and the occupation of the assignees when the rent accrued; Boot *v.* Wilson, 8 E. 311: (but see stat. 49 Geo. III. c. 121. sec. 19., as to the discharge of the bankrupt where the assignees accept of the lease). Against a tenant for rent, after the premises are burnt down, and no longer inhabited; Baker *v.* Holtpzaffell, 4 Taunt. 45.—It will not lie against a person entering as purchaser under a contract of sale, which is not completed on account of some defect in the vendor's title; Kirtland *v.* Pounsett, 2 Taunt. 145. Against assignees who take possession on the bankruptcy of the tenant in the middle of the year, for the occupation of the tenant, not proved to be at their request; Nash *v.* Tatlock, 2 H. B. 318. In Redpath *v.* Roberts, 3 Esp. 225, Lord Kenyon held, that if the tenant abandon the premises without notice, the landlord is not precluded from recovering the subsequent rent by putting up a bill at the window, and endeavouring to procure another tenant.

The general proposition that a tenant cannot dispute his landlord's title, is established by several cases, and is now received as an undisputed rule of law. In Cooke *v.* Loxley, 5 T. R. 4., a tenant of part of the glebe of a parish, who had entered under a former incumbent, and paid rent to the successor, was not, in an action for rent subsequently incurred, allowed to dispute the title of the incumbent on the ground of simony, although he alleged that, at the time of the payment, he was ignorant of that objection. In England *v.* Slade, 4 T. R. 682., Lord Kenyon said, and the other judges agreed, that it was competent to the defendant to shew that the lessor's title had expired, and that he had no right to turn him out of possession; but in Balls *v.* Westwood, 2 Camp. N. P. 11., being an action for use and occupation of a copyhold estate, the defendant offered to shew that the estate had been seized or forfeited to the lord by process out of the court baron, and that, having notice from the steward to pay the rent to the lord, he had done so ever since; which Lord Ellenborough would not allow, saying, "You cannot controvert the title of the person under whom you continue to hold. The security of landlords would be infinitely endangered if such a proceeding were permitted. Had the defendant upon the premises being seised by the lord of the manor, disclaimed holding of the plaintiff, and entered afresh under the new landlord, we might now enquire into the validity of the seizure, and decide who is legally entitled to the premises; but the same tenancy continues which was created by the original demise, and the tenant must still pay rent to the lessor, whose title he then recognized."

In an action for use and occupation, it is not necessary to set forth the particulars of the demise; Wilkins *v.* Wingate, 6 T. R. 62., (in debt; but the same holds good in assumpsit); or to state the place where the premises lie; King *v.* Frazer, 6 T. R. 62.

[In this case it was said that the inconvenience resulting to the defendant from this general mode of declaring was remedied by permitting the defendant to call for a bill

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XV. 'And whereas where any lessor or landlord, having only an 'estate for life in the lands, tenements or hereditaments demised, hap-'pens to die before or on the day, on which any rent is reserved, or 'made payable, such rent, or any part thereof, is not by law recovera-'ble by the executors or administrators of such lessor or landlord; nor 'is the person in reversion entitled thereto, any other than for the use 'and occupation of such lands, tenements or hereditaments, from the 'death of the tenant for life; of which advantage hath been often taken 'by the under-tenants, who thereby avoid paying any thing for the 'same;' For remedy whereof be it enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, One thousand seven hundred and thirty-eight, where any tenant for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively. (1)

Rents recoverable from under-tenant, where tenants for life die before the rent is payable.

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of particulars: but if the doctrine was founded on no better reason than that, it would be very unsatisfactory, as it can never be admitted that the rules of pleading, which are part of the law of the land, can be varied by a modern practice, introduced upon the mere authority of the Courts.]

That debt for use and occupation is not local, was also decided in Egler *v.* Marsden, 5 Taunt. 25.

Where the premises were stated to be situate in a parish which did not exist, Lord Kenyon held it a fatal variance; Wilson *v.* Clark, 1 Esp. R. 273; but in Kirtland *v.* Pounsett, 1 Taunt. 570, the declaration being for use and occupation of premises in the parish of Lambeth, the real name of the parish being St. Mary Lambeth, although the parish was well known by the name of Lambeth, the variance was held immaterial. The question of variance, where the declaration it tied up to a particular description of locality, does not seem to be at all affected by the decision, that no allegation of locality is necessary; although the contrary may perhaps be inferred from the observations of Lawrence J. in the case last referred to.

(1) There is no rule of the law more certain and notorious, than that an entire contract cannot be apportioned; and the doctrine which existed upon the subject previous to the passing of the Act was no more than the application of that general rule which still subsists, notwithstanding many efforts to controul it by mere judicial authority. The hardship upon landlords in cases previous to the statute, or to which the statute does not extend, has been often expatiated upon; but the inconvenience sustained by a tenant, by the sudden determination of his interest, seems to have been altogether overlooked; and I am not aware that there was any great reason for complaining of a rule, the effect of which could always be obviated by express stipulations. Upon this ground I feel by no means disposed to regard with particular estimation the cases in which an effort has been made to carry the provisions of the statute, by analogical reasoning, beyond their fair and natural import and construction.

In Paget *v.* Gee, Burn, tit. *Distress*, Ambler, 198, the lessee of tenant in tail, whose estate determined in the middle of a half-year, paid the entire rent to the remainder-man in fee; and Lord Hardwicke decided that the executors of the tenant in tail were entitled to an apportionment. His lordship expressed an opinion that tenant in tail, after possibility of issue extinct, or tenant for years, determinable upon lives, was within the Act; gave no absolute opinion as to the case of tenant in tail, but said, "As to the equity arising from the statute, I know no better rule than this, that *equitas sequitur legem*. Where equity finds a rule of law agreeable to conscience, it pursues the sense of it to analogous cases. If it does so as to the maxims of the common law, why not as to the reasons of Acts of Parliament? But I ground my opinion in this case upon the tenant having submitted to pay the rent. He has held himself bound in conscience to pay for the use and occupation of the land the last half-year. He paid it to the defendant, which he was not bound in law to do; and in such case the person he pays it to shall be accountable, and considered as receiving it for those who are in equity entitled."—I am not aware of any passages in our judicial annals which appear to me more exceptionable than the first of those that have been just extracted. The argument is, that because courts of equity, in their general reasonings, are guided by the analogy of the common law, they shall be admitted to assume an authority to outrun the legislature in the positive alteration of the law;

'XVI. And whereas landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for the rent-arrear, but also refusing to de-

and that, when a remedy is applied by the Parliament to one or two particular cases, the judicial powers of the country shall consider themselves privileged to apply a similar remedy to other cases which are subject to similar inconvenience. A more striking instance could not be given of the mischief which results from harping upon an ambiguous phrase, than the use which is here made of the maxim that *equitas sequitur legem*. In the fair exposition of the maxim, the meaning of it is, that equity acts by analogy to the common law. In the extension which is attempted to be given to it, the position assumed is, that a court of equity follows the example of the Legislature. The other position, though not calling for any animadversion upon the attempt to grasp at an excess of jurisdiction, does not by any means appear to be founded upon accurate reasoning. If the tenant expressly paid the money with a view to the apportionment directed, it was perfectly right that such apportionment should be actually made; but, being continued as tenant on the estate, he pays the rent without any such apparent view. It was at the option of the remainder-man whether he should continue or be removed; and it is quite as natural to presume that the payment was made in consideration of his being so permitted to remain, as with a view to the distribution appointed by the statute. And it should not be forgotten, that if the tenant *in* tail, who happened to make the demise, had made such a demise as would have been valid and subsisting against the remainder-man, the right of the remainder-man to the whole rent, according to the reservation from the commencement of his title to the possession of the estate, would have been as clear and indisputable as any right known to the law.

In Vernon *v.* Vernon, 2 Bro. Ch. 659., the question arose on a demise from year to year by the guardians of an infant tenant in tail, and Lord Thurlow determined in favour of the apportionment. He said the case of Paget *v.* Gee, seemed rather to be a decision of what the statute ought to have done than what it had done; but the question here seems to turn on another ground, that the tenant holding from year to year, or from period to period from a guardian, without lease or covenant, cannot be allowed to raise an implication in his own favour that he should hold without paying any rent to any body. This reasoning does not seem to be a great deal more satisfactory than that which has last been commented upon. The tenant held by right or by wrong. It is not pretended that he held by wrong, and holding by right his tenancy was according to his contract, and subject to all its legal incidents and consequences. The letting of the land was for the infant's benefit; but although an infant should be guarded from prejudice, it is not requisite that he should have a benefit, which, under similar circumstances could not be claimed by an adult, to the prejudice of a third person standing upon his legal rights. The counsel for the infant's representative cited a case of Whitfield *v.* Pindar, in the Common Pleas, Hil. 1781, where the tenant in tail, remainder to others in tail, made a lease, and died three weeks after the rent day, and it was ruled that there should be an apportionment (it is added, *though the lease was void as against the remainder-man*, as if there could be any claim of apportionment if it had not been so void). This is a decision at law upon the express effect of the statute, and stands upon much better grounds than the attempt in the cases before alluded to, to apply the principles of the statute to cases assumed not to be within the operation of it. Whether the expression, *tenant for life*, should be understood strictly and literally, or as applicable generally to all persons whose interest determines with their life, was a fair question of construction; and I think that if it had still remained open to discussion, the latter view of it was more correct, and more conformable to the apparent intention of the Legislature.

In Hawkins *v.* Kelly, 8 Ves. 308., (which arose upon a demurrer on account of the matter being cognizable at law) Lord Eldon, acting upon the authority of Paget and Gee, held, that upon a lease of the glebe, parsonage-house, tithes, &c. of a rectory, the tenant having paid the entire rent to the successor, the executors of the deceased rector were entitled to an apportionment.

In Williams *v.* Powell, 10 East 269., (which was admitted to be a case not within the statute) the predecessor of the defendant, as rector, had compounded with the occupiers of lands for their tithes: the defendant had received the whole amount of the composition, and paid into court sufficient to cover the tithes which had accrued due in the life-time of the deceased, which the court held sufficient, not conceiving him liable in respect of an apportionment of time. The Reporter very reasonably observes, that it seems that if the tithes in kind for which the composition was made would, supposing there had been no composition, have been wholly due before the death of the deceased rector, his representatives would have been legally and equitably entitled to the whole, however they might be restrained by agreement with the parishioners not to demand payment till the day agreed upon, and the successor could not be entitled to any part of such composition. In the subsequent case of Ainsley *v.* Wadsworth, 2 V. & B. 331, the successor having received the whole year's composition, the Vice-Chancellor decreed an apportionment with reference to the respective periods of enjoyment.

In Salter *v.* Champlin, 10 Ves. 66, the question being whether land-tax, quit-rents, and

No. XXIII. 11 George II. c. 19.

Provision for landlords, where tenants desert the premises.

'liver up the possession of the demised premises, whereby the landlords, 'are put to the expense and delay of recovering in ejectment;' Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-eight, if any tenant holding any lands, tenements, or hereditaments, at a rack-rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, (1) so as no sufficient distress can be had to countervail the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county, riding, division, or place (having no interest in the demised premises) at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof: and if upon such second view the tenant, or some person on his or her behalf, shall not appear, and pay the rent in arrear, or there shall not be sufficient distress upon the

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other charges which became due after the death of tenant for life, should be sustained by the remainder-man, or be apportioned? The Master of the Rolls said, the statute 11 Geo. II. has no application to this case. It might be very reasonable to make such a statute, as to the apportionment of taxes between the tenant for life and the remainder-man, giving the tenant for life the benefit only as against the tenant under the lease.—In a view of the law of apportionment, introduced into the Appendix to the Translation of Pothier, (p. 47.) it occurred to me to observe that this Act stops short of its probable object, in not including the case of a tenant for the life of another person, whose estate determines by the death of such other person; and that if an ecclesiastical person makes a lease, and vacates his preferment by the acceptance of another, I conceived that there could be no apportionment. The case of tenant *pur autre vie* has been since incidentally noticed in the case of Wykham *v.* Wykham, 3 Taunt. 331, in which, with reference to some observations of counsel, Mansfield C. J. said—"Has it ever been determined that the executor of a tenant *pur autre vie* is entitled to recover a portion of the rent from the last quarter-day under the statute? He is certainly within the mischief, for otherwise the tenant of the land may keep the rent for his own benefit." To use the language of the Master of the Rolls, it might be very reasonable to make a statute for the purpose: but certainly the language of the present statute will not admit of such an interpretation; and it would be much better, until there is another, to let the inconvenience remain as it is, than to allow the assumption of that judicial legislation, of which it is more easy to check the beginning, than to calculate the end.

In the case of Earl Strafford *v.* Wentworth, Prec. Ch. 555, a tenant for life had made leases, some of which, being under a power, had continuance after his death; and others not being according to his power, determined with his life, and died on the rent day, about 12 o'clock at noon; and Lord Macclesfield held, that the latter belonged to his executors, because, although for the benefit of the tenants, they had, to the last instant of the day, to pay the rents; yet as soon as the day began, they were at their peril to take care that they were paid accordingly; but as to the lease made by virtue of the power, they had existence and continuance after the death of the lessor, and thus the rent went along with the reversion, to those who were entitled to it. In Lord Rockingham *v.* Penrice, 1 P. Wms. 177, the tenant for life died before sun-set, and it was held that the person in remainder was entitled to the rents that became due that day. One tenant had paid his rent to the tenant for life in the morning, and it was held, that though this was a good payment to discharge the tenant, the executors should account for it to the party in remainder. Upon this point the reporter makes a query; for if the payment was a good payment at law, as it certainly was, why must it not be so in equity? A case was cited before Tracey J. at Durham, where the executor of a grantee for life of a rent-charge, who died after sun-set on the day was held entitled. See Duppa *v.* Mayo, 1 Saund. 287., in which it was held, as between heirs and executors of tenant in fee, that where the lessor died after sun-set, and before midnight, (the rent not being previously paid) the heir was entitled.

(1) Where a tenant ceased to reside on the premises for several months, and left them without nay furniture, or sufficient other property to answer the year's rent; held that the land might be properly proved under s. 16. to recover the possession, although he knew where the tenant then was, and although the justices found a servant of the tenant on the premises, when they first went to view the same: held also that it is not necessary, to state, in the record of the magistrates' proceedings, that the landlord had a right of re-entry; although such a right must exist in order to entitle the party to proceed under that statute; Ex parte Pilton, 1 B. & A. 369.

premises; then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

XVII. Provided always, That such proceedings of the said justices shall be examinable in a summary way by the next justice or justices of assize of the respective counties in which such lands or premises lie; and if they lie in the city of *London* or county of *Middlesex*, by the judges of the courts of King's Bench or Common Pleas; and if in the counties palatine of *Chester*, *Lancaster*, or *Durham*, then before the judges thereof; and if in *Wales*, then before the courts of grand sessions respectively; who are hereby respectively empowered to order restitution to be made to such tenant, together with his or her expenses and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the Act of the said justices, to award costs not exceeding five pounds for the frivolous appeal.

Tenants may appeal from the justices.

'XVIII. And whereas great inconveniences have happened and may 'happen to landlords, whose tenants have power to determine their 'leases, by giving notice to quit the premises by them holden, and yet 'refusing to deliver up the possession, when the landlord hath agreed 'with another tenant for the same;' Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-eight, in case any tenant or tenants shall give notice (1) of his, her, or their intention to quit (2) the premises by him, her, or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained; that then the said tenant or tenants, his, her, or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent (3) or sum which he, she, or they should otherwise have paid, to be levied, (4) sued for, and recovered at the same time, and in the same manner, as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid, during all the time such tenant or tenants shall continue in possession as aforesaid.

Tenants holding premises after the time they notify for quitting them, to pay double rent.

'XIX. And whereas it hath sometimes happened, that upon a distress 'made for rent justly due, the directions of the statute made in the 'second year of the reign of King *William* and Queen *Mary*, intituled, '"An Act for enabling the Sale of Goods distrained for Rent in case the 'Rent be not paid within a reasonable Time," have not been strictly 'pursued, but through mistake or inadvertency of the landlord or other 'person entitled to such rent and distraining for the same, or of the 'bailiff or agent of such landlord or other person, some irregularity or 'tortious Act hath been afterwards done in the disposition of the dis-'tress so seized or taken, as aforesaid; for which irregularity or tortious 'Act the party distraining hath been deemed a trespasser *ab initio*, and 'in an action brought against him as such the plaintiff hath been enti-'tled to recover, and has actually recovered, the full value of the rent, 'for which such distress was taken: And whereas it is a very great hard-'ship upon landlords and other persons entitled to rents, that a distress 'duly made should be thus in effect avoided for any subsequent irregu-'larity;' Be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* in the year of our Lord One thousand seven hundred and thirty-eight, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful Act shall be afterwards done by the party or parties distraining, or by his, her, or

2 W. & M. c. 5.

Distresses for rent not unlawful, &c. for any irregularity in the disposition of them;

(1) The notice need not be in writing; Timmins *v.* Rowlinson, 3 Bur. 1603.

(2) A notice that the tenant will quit as soon as he can get another situation does not bring a case within the statute; Farrance *v.* Elkington, 2 Camp. 591.

(3) This differs from 4 George II. which subjects the tenant to double the yearly value, in case the notice is given by the landlord.

(4) By distress; Timmins *v.* Rowlinson, 3 Bur. 1603.

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their agents; the distress itself shall not be deemed to be unlawful, nor the party or parties making it be therefore deemed a trespasser or trespassers *ab initio*; (1) but the party or parties aggrieved by such unlawful Act or irregularity shall or may recover full satisfaction for the special damage, he, she, or they shall have sustained thereby, and no more, in any action or trespass, or (2) on the case at the election of the plaintiff or plaintiffs: Provided always, That where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

nor tenants to recover by action, on tender of amends.

XX. Provided nevertheless, That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful Act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.

In actions against persons entitled to rents, and defendants may plead the general issue.

XXI. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-eight, in all actions of trespass or upon the case to be brought against any person or persons entitled to rents or services of any kind, his, her, or their bailiff or receiver, or other person or persons, relating to any entry by virtue of this Act, or otherwise, upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels thereupon; it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue, and give the special matter in evidence; any law or usage to the contrary notwithstanding: And in case the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment against him, her, or them, the defendant or defendants shall recover double costs (3) of suit.

Defendants in replevin to avow, &c. that the plaintiff held the premises at a certain rent, &c.

'XXII. And whereas great difficulties often arise in making avowries 'or conuzance upon distresses for rent, quit-rents, reliefs, heriots, and 'other services;' Be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-eight, it shall and may be lawful to and for all defendants in replevin to avow or make conuzance generally, (4) that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise (5) at such a certain rent (6) during the time wherein the rent distrained for

(1) Trespass may be maintained where the defendant expels the plaintiff from the premises and keeps possession after the rent paid; Etherton *v.* Popplewell, 1 East, 139. So where the defendants continued in possession eleven days before they began to remove the goods, and were then employed four days in removing them; but whether the action was sustainable for the mere continuance, or on account of the taking and removing of the goods from the premises, and disturbing the plaintiff's possession after the time when they ought to be removed, was not agreed. Lord Ellenborough and Grose J. ruled the case on this latter ground, as distinguished from the former. Le Blanc J., assented to the action being maintainable on that ground, but said he did not wish to be precluded from saying in a subsequent case, that a party might be a trespasser by continuing on the premises wrongfully. Bayley J. held, that trespass for the wrongful continuance was the proper remedy, and that the other ground could not be supported. Winterbourne *v.* Morgan, 11 East, 395.

For an irregularity in the subsequent disposition (as in selling without proper appraisement) trover cannot be maintained since the statute, as it tends to place the landlord in the same situation as before, by considering him a trespasser *ab initio;* Wallace *v.* King, 1 H. B. 13.

(2) Lord Ellenborough did not consider this as giving the plaintiff an option which remedy to pursue, in every case of an unlawful Act or irregularity, but merely an option according to the subject matter of the grievance; Winterbourne *v.* Morgan, *ub. supra.*

(3) It is not necessary that there should be either a certificate from a judge, or a suggestion on the roll, in order to entitle a defendant to double costs on this Act; Finlay *v.* Seaton, 1 Taunt. 210.

(4) The defendant cannot plead generally *de injuria propria* in bar of such avowry; Jones *v.* Kitchen, 1 B. and P. 76.

(5) The Act does not extend to an avowry for a rent charge; Bulpit *v.* Clarke, 1 N. R. 56; or to a rent under a Canal Act, in satisfaction for damages, and charged on the rates; but only to the rent directly reserved by a landlord on his grant, on demise of land theretofore made; Leominster Canal *v.* Cowell, 1 B. and P. 213.

(6) An avowry for rent of ——*l.*, and an in-

incurred, which rent was then and still remains due; or that the place where the distress was taken was parcel of such certain tenements, held of such honour, lordship, or manor, for which tenements the rent, relief, heriot, or other service distrained for, (1) was at the time of such distress and still remains due, without further setting forth the grant, tenure, demise, or title, of such landlord or landlords, lessor or lessors, owner or owners of such manor; any law or usage to the contrary notwithstanding: And if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment given against him, her or them, the defendant or defendants in such replevin (2) shall recover double costs of suit. (3)

To prevent vexatious replevins.

XXIII. And to prevent vexatious replevins of distresses taken for rent, Be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-eight, all sheriffs, and other officers having authority to grant replevins, may and shall in every replevin of a distress for rent, take in their own names, from the plaintiff, and two responsible (4) persons as sureties, a bond in double the value of the goods distrained (5) (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress, which oath the person granting such replevin is hereby authorized and required to administer), and conditioned for prosecuting the suit (6) with effect and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded, before any deliverance be made of the distress; and that such sheriff, or other officer as aforesaid, taking any such bond,

Replevin bonds may be assigned.

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creased rent of ——*l.* for every acre converted into tillage is supported by a demise for 21 years, with a reservation of the advanced rent during the last three years; and for which advanced rent during those three years the distress was made. It was objected that the avowry ought either to have been general under the statute, or special as at common law, whereby the avowant was bound to an exact statement of his title in *omnibus;* and that in the present case it was neither; Roulston *v.* Clarke, 2 H. B. 593.

(1) If a less rent was due than is avowed for, the avowant may recover for so much as is due; Harrison *v.* Barnby, 5 T. R. 248; Forty *v.* Imber, 6 East, 434.

(2) The statute 11 Geo. 2. c. 19. s. 22. gives double costs against a plaintiff in replevin only in three cases, *viz.* where he is nonsuit; discontinues his action; or has judgment given against him. And, therefore, where in replevin, the cause then not being at issue, the parties agreed by bond to submit the question to arbitration, the costs to abide the event, and the arbitrator afterwards awarded in favor of defendant, it was held that he is not entitled to double costs under the statute; Gurney *v.* Buller, 1 B. and A. 670.

(3) In an avowry for distress, damage feasant, it is still necessary to set out the person's title in pleading. In Scilly *v.* Dally, 2 Salk. 562, Holt, C. J. called this an established rule in pleading, which was not to be broken upon fancied inconveniences. A practice had begun to prevail of avowing generally that the defendant was *lawfully possessed* of the *locus in quo.* Such pleas have been ruled to be bad in Hawkins *v.* Eckles, 2 B. and P. 359, of which Serjeant Williams observes, in note to 2 Saund. 284, that the Court of Common Pleas it was hoped had thereby put an effectual stop to such an innovation. The judgment of the case was evidently correct and conformable to the established rules of pleading; but I am far from joining the learned Serjeant in his hopes, if intended to apply to a legislative provision upon the subject, for it certainly is no fancied inconvenience that a person in the peaceable possession of land, and having in respect of such possession an undisputed right of maintaining an action of trespass, should be subjected to the inconvenience of a precise statement of his title, in order to avail himself of his legal remedy against an acknowledged wrong-doer.

(4) The sheriff is accountable for the sufficiency of the sureties in such bond, as also for the sufficiency of the pledges under stat. West. 2. c. 2. *ante,* No. 6. And an action on the case may be maintained for the insufficiency of such sureties or pledges; B. N. P. 60. In such action the sheriff is only liable to the amount for which the sureties would have been liable if sufficient; Yea *v.* Lethbridge, 4 T. R. 433; Evans *v.* Brander, 2 H. B. 547; which latter case overrules Concannen *v.* Lethbridge, *id,* 36; whereby it was held that the damages might exceed the penalty of the bond and cover the rent and expenses. The action ought to be brought by the person making cognizance if there is no avowant on the record; Page *v.* Eamer, 1 B. and P. 378. The court will not, on motion, order the officer to pay the costs of the replevin; Tesseyman *v.* Gildart, 1 N. R. 292.

(5) The two sureties are only liable to the amount of the penalty in the bond and costs of suit against themselves; Hefford *v.* Alger, 1 Taunt. 218.

(6) If the plaint be removed by *re: fa: lo:* the condition extends to prosecuting the suit with effect in the superior court.

No. XXIII. 11 George II. c. 19.

shall at the request and costs of the avowant, or person making conuzance, assign (1) such bond to the avowant or person aforesaid, (2) by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses; which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereupon; and if the bond so taken and assigned be forfeited, the avowant, or person making conuzance, may bring an action, and recover thereupon in his own name; (3) and the court where such action shall be brought, (4) may by a rule of the same court give such relief to the parties upon such bond, as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeazance to such bond.

[No. XXIV.] 57 Geo. III. c. 52.—An Act to alter an Act passed in the Eleventh Year of the Reign of King *George* the Second, for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants.—[*27th June* 1817.]

57 George III. c. 52. 11 G. 2. c. 19.

WHEREAS by an Act of Parliament passed in the eleventh year of the reign of his late Majesty King *George* the Second, intituled *An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants*, it is amongst other things enacted, That from and after the twenty-fourth day of *June* One thousand seven hundred and thirty-eight, if any tenant holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved should be full three-fourths of the yearly value of the demised premises, who should be in arrear for one year's rent, should desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress could be had to countervail the arrears of rent, it should and might be lawful to and for two or more justices of the peace of the county, riding, division, or place (having no interest in the demised premises), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part of the premises notice in writing what day (at the distance of fourteen days at least) they would return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, should not appear and pay the rent in arrear, or there should not be sufficient distress upon the premises, then the said justices might put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, should from thenceforth become void: And whereas it is expedient, for the due protection of the interest of landlords, that so much of the said Act as requires a tenant to be in arrear for one year's rent should be altered, and that the provisions of the said Act should be extended to tenancies where no right of entry in case of non-payment is reserved to the landlord; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

(1) *Quære*, Whether a bond taken by the sheriff upon making replevin, but not in all points conformably to the directions of the statute, 11 Geo. 2. c. 19, be assignable? Austen *v.* Howard, 7 Taunt. 327.

(2) In Dias, Assignee, *v.* Freeman, 5 T. R. 191, the breach was for not appearing at the county court; and upon demurrer it was insisted that the assignment could only be made to the avowant, or person making cognizance; but it was ruled that the plaintiff was entitled to an assignment as a person who would have made cognizance but for the neglect of the defendant. The assignment may be to the avowant only, without joining the person making cognizance; Archer *v.* Dudley, 1 B. and P. 381. n.

(3) The action on the bond may be in a superior court, although the suit was never removed out of the county court. It was observed that the words were the same as those in 4 Anne, c. 16, for assigning bail bonds, upon which the action must be brought in the same court as the action in which the bond was taken; Dias *v.* Freeman, 5 T. R. 195.

(4) See Wilan *v.* Hobday, 4 M. and S. 120.

and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the provisions, powers, and remedies by the said recited Act given to lessors and landlords in case of any tenant deserting the demised premises and leaving the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, shall be extended to the case of tenants holding any lands, tenements, or hereditaments at a rack rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premises, and who shall be in arrear for one half year's rent, (instead of for one year as in the said recited Act is provided and enacted) and who shall hold such lands and tenements or hereditaments under any demise or agreement either written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent, who shall be in arrear for one half year's rent, instead of for one year, as in the said recited Act is provided and enacted.

No. XXIV. 57 Geo. III. c. 52.

Certain provisions of recited Act extended to the case of tenants in arrear for one half year's rent instead of one year.

[No. XXV.] 57 George III. c. 93.—An Act to regulate the Costs of Distresses levied for Payment of Small Rents.—[10*th July* 1817.]

57 George III. c. 93.

WHEREAS divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others; and it is expedient to check such practices; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of twenty pounds for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any Act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive, out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed and appropriated to each Act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any Act, matter, or thing mentioned in the said schedule, unless such Act shall have been really done.

No person making any distress for rent, where the sum due shall not exceed 20*l.* to take other charges than mentioned in the schedule annexed;

nor to charge for any Act not done.

II. And be it further enacted, That if any person or persons whatsoever shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any Act, matter, or thing mentioned in the said schedule, and not really done, it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, town, and acting for the division where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievance so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had other and greater costs and charges than are mentioned or fixed in the schedule hereunto annexed, or made any charge for any matter or thing mentioned in the

Party aggrieved by any such practice may apply to a justice of the peace.

Justice may adjudge treble the amount of the monies unlaw-

No. XXV. 57 Geo. III. c. 93.

said schedule, such Act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the monies so unlawfully taken to be paid by the person or persons so having acted to the party or parties who shall thus have preferred his, her, or their complaint thereof, together with full costs; and in case of non-payment of any monies or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such monies or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale; and in case no sufficient distress can be had, such justice shall by warrant under his hand commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied.

fully taken to be paid with costs, which may be levied by distress.

Justices may summon witnesses.

III. And be it enacted by the authority aforesaid, That it shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them touching the matter of such complaint or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath, or if a quaker upon solemn affirmation, then every such person so offending shall forfeit and pay a sum not exceeding forty shillings, to be ordered, levied, and paid in such manner and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, and hereinafter provided for.

Penalty.

If complaint unfounded, justice may give costs to the party complained against.

IV. And be it further enacted, That it shall be lawful for such justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs not exceeding twenty shillings to be paid to the party or parties complained against, which order shall be carried into effect, and levied and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: Provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress: Provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by any costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy which he, she, or they might have had before the passing of this Act, excepting so far as any complaint to be preferred by virtue of this Act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined; and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action.

No judgment to be given against any landlord, unless he personally levies the distress.

Parties not to be barred of other legal remedies.

Signature of the justice proof of judgment.

V. And be it further enacted, That such orders and judgments on such complaints shall be made in the form in the schedule hereunto annexed, and may be proved before any court by proof of the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses shall be made in such form as to such justice shall seem most fit and convenient.

Brokers to give copies of their charges to the persons distrained.

VI. And be it further enacted, That every broker or other person who shall make and levy any distress whatsoever shall give a copy of his charges and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of twenty pounds.

Printed copy of Act to be hung up in sessions house.

VII. And be it further enacted, That a fair printed copy of this Act shall be hung up in some convenient place in such halls or rooms where the justices of each and every county in *England* and *Wales* shall hold either their quarter or other sessions.

No. XXVI. 6 Geo. IV. c. 43.

Schedule referred to in this Act.

FORM of the Order and Judgment of the Justice before whom Complaint is preferred, where the Order and Judgment is for the Complainant.

In the matter of the complaint of *A. B.* against *C. D.* for a breach of the provisions of an Act of the fifty-seventh year of his Majesty King George the Third, intituled *An Act [here insert the title of this Act]* I, *E. F.* a Justice of the Peace for the county of and acting within the division of do order and adjudge that the said *C. D.* shall pay to *A. B.* the sum of as a compensation and satisfaction for unlawful charges and costs levied and taken from the said *A. B.* under a distress for rent: and the further sum of for costs on this complaint.

(Signed) *E. F.*

FORM of the Order and Judgment of the Justice, where he dismisses the Complaint as unfounded, and with or without Costs, as the Case may be.

In the matter of the complaint of *A. B.* against *C. D.* for the breach of the provisions of an Act of the fifty-seventh year of his Majesty King George the Third, intituled *An Act [here insert the title of this Act]* I, *E. F.* a Justice of the Peace for the county of and acting within the division of do order and adjudge that the complaint of the said *A. B.* is unfounded; [*if costs are given*] and I do further order and adjudge, that the said *A. B.* shall pay unto the said *C. D.* the sum of for costs,

(Signed) *E. F.*

SCHEDULE of the Limitation of Costs and Charges on Distresses for Small Rents.

	l.	*s.*	*d.*
Levying Distress	0	3	0
Man in possession, per Day	0	2	6
Appraisement, whether by one Broker or more, Sixpence in the Pound on the Value of the Goods.			
Stamp, the lawful Amount thereof			
All Expenses of Advertisements, if any such	0	10	0
Catalogues, Sale and Commission, and Delivery of Goods, One Shilling in the Pound on the Net Produce of the Sale.			

[No. XXVI.] 6 George IV. c. 43.—An Act to amend and render more effectual an Act made in the Tenth Year of the reign of King *Charles* the First, for impounding of Distresses in *Ireland*.—[10th *June* 1825.]

WHEREAS an Act was passed in the Parliament of *Ireland*, in the tenth year of the reign of King *Charles* the First, intituled *An Act for the Impounding of Distresses*: And whereas the provisions of the said recited Act are not sufficient for the purposes intended; and it is expedient that a more effectual regulation should be made for such purposes, and to prevent abuse in the making and impounding of distresses in *Ireland*; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this

10 C. I. c. 25.

No. XXVI. 6 Geo. IV. c. 43.

present Parliament assembled, and by the authority of the same, That every person who at the time of the passing of this Act, or at any time before the first day of *January* one thousand eight hundred and twenty-six, shall be, or shall be duly appointed the keeper, or shall act as keeper of any pound overt in *Ireland*, legally constituted, shall on or previous to such first day of *January* one thousand eight hundred and twenty-six, at some Quarter Sessions or adjournment thereof, enter into security by recognizance to the Clerk of the Peace of the county, county of a city or county of a town, within which such pound shall be situate, or to the mayor or other chief officer of a town corporate, where a pound shall be situate within the jurisdiction of such town corporate, (and which recognizance such Clerk of the Peace or mayor, or other chief officer, is hereby authorized and empowered to take, and for taking which recognizance it shall not be lawful to charge or take any fee) conditioned for the due execution of the office of pound keeper; that is to say, each such pound keeper in the sum of ten pounds, and two sufficient sureties in the sum of five pounds each; and that every person who at any time after the said first day of *January* one thousand eight hundred and twenty-six, shall be or shall hereafter be appointed to be the keeper of any such pound, shall enter into the like security, at some Quarter Sessions or adjournment thereof which shall be held within the county or division, or riding of a county, county of a city or county of a town, or town corporate, within which such pound shall be situate; and every such security shall be renewed yearly and every year, in manner aforesaid; and if any person in *Ireland* shall keep any pound overt, or shall act as a pound keeper, without having given and entered into such security as is required by this Act, or without having renewed such security in manner aforesaid, every such person shall for every such offence forfeit the sum of ten pounds, to be recovered and applied in manner herein-after mentioned.

Pound Keepers shall give Security by Recognizances to the Sheriff, to be renewed annually.

Penalty 10*l*.

II. And be it further enacted, That if any person, at any time after the passing of this Act, shall rescue any cattle which shall have been lawfully seized for the purpose of being impounded, or shall break down, injure, or destroy any pound legally constituted, whether any cattle shall be impounded therein or not, or shall commit any pound breach or rescue, whereby any cattle of any description shall escape or be enlarged from any such pound, every such person shall be deemed guilty of a misdemeanor; and upon conviction of such offence, either at the Assizes or Quarter Sessions of the county or place where such pound shall be situated, shall be liable to suffer fine and imprisonment, at the discretion of such Court before whom such offender shall be tried and convicted.

Persons rescuing Cattle, or injuring Pound, whether Cattle shall be therein or not, declared guilty of a Misdemeanor.

III. And be it further enacted, That every pound keeper as aforesaid, whenever and so often as any animals of any description which shall be found straying shall be impounded with him, shall post a written notice on the gate of his pound, and also upon the nearest church and chapel, setting forth a description of such cattle so impounded or in his possession; and such notice shall remain so posted, until such animals shall have been claimed, or otherwise disposed of by due course of law; and every pound keeper who shall neglect to post such notices as aforesaid, shall not claim or be entitled to receive any poundage fee for the custody of such animal, and shall for each such neglect forfeit and pay a sum not exceeding five pounds.

Whenever any stray Cattle are put in Pound, Notice to be posted on the Pound and adjacent Church and Chapel, describing the Animals so pounded.

Penalty.

IV. And be it further enacted, That from and after the passing of this Act, it shall and may be lawful for the magistrates assembled at the *Michaelmas* Quarter Sessions in their several districts, and they are hereby authorized and empowered to appoint and fix the rate or price which it shall be lawful for the keepers of any such pound as aforesaid to charge and receive, for the sustenance of the cattle, of whatever description, which shall be committed to any such pound, in case the owner of such cattle should not feed them himself; which rate or price so fixed by such magistrates shall constantly be and remain posted in legible characters, either on the outside of the dwelling house, or on the outside of the pound of every such pound keeper; and every pound keeper who shall not keep

Magistrates assembled at Michaelmas Quarter Sessions shall fix the Charge which Pound Keepers may make for Sustenance of Cattle within their Pounds.

Penalty for not keeping Rates posted up, or charging more than what shall be fixed.

such rate so continually posted, or who shall charge any greater sum or rate for the sustenance of any such cattle, than the rate or sum fixed by such magistrates as aforesaid, shall forfeit and pay any sum not exceeding five pounds for each and every month that he shall so act as pound keeper without having such rate affixed as aforesaid.

Charges of Pound Keepers :

V. And be it further enacted, That from and after the passing of this Act, it shall and may be lawful for the keeper of each and every pound in *Ireland* legally constituted, to demand and receive as pound fees, for the cattle of the several descriptions which shall be impounded therein, the several and respective sums following, and no more; any thing in the said recited Act of the tenth year of the reign of King *Charles* the first, or any other Act or Acts, or any law or custom to the contrary in anywise notwithstanding; that is to say, For the first or only horse mule or ass, and for the first or only horned beast, commonly called black cattle, the sum of five-pence, and the further sum of two-pence for each and every additional beast of the kind impounded at the same time for the same distress; and for any one or more, not exceeding four in number, of sheep, lambs, goats, or swine, which shall be so impounded, the sum of four-pence, and the further sum of one penny each for every additional animal of the like kind, beyond four, impounded at the same time, or for the same distress.

For the first Horse, &c. 5*d.*; and 2*d.* for every other.

For Sheep, &c. not exceeding four, 4*d.*, and 1*d.* for every one additional.

What Rates to be taken by Pound Keepers for the time during which the cattle remain impounded.

VI. And be it further enacted, That the several sums so by this Act authorized to be demanded and taken by any such pound keeper, shall be taken and deemed to be in full satisfaction as pound fees to such pound keeper for three days, consisting of seventy-two hours next after the time when such cattle shall be so impounded, whether such cattle shall remain impounded during the whole or during part only of such seventy-two hours; and that after such three days it shall be lawful for any pound keeper to demand and take one half of the like sum, at the rate herein-before mentioned, for every additional seventy-two hours during the whole or any part of which any cattle of the description herein-before mentioned shall remain in the custody of such pound keeper in such pound, and whether such cattle shall remain impounded during the whole or during part only of such seventy-two hours: Provided always, that no greater sum shall be demanded or taken by any pound keeper, as pound fees, for any one distress for the same demand, than the sum of twenty pence in the whole, whatever may be the number of animals taken for such distress, or whatever may be the length of time that they shall have been impounded for the same.

Pound Fees for a Distress, 20*d.*

Penalty on Pound Keepers for Extortion, neglect of Pound, &c. not exceeding 5*l.*

VII. And be it further enacted, That if any pound keeper in *Ireland* shall demand or take any greater sum for the impounding of any cattle than such pound keeper is by this Act authorized to demand and take; or if the walls of the pound of any such keeper shall not be well and substantially built with stone or brick, and of the height of seven feet at the least; or if three-fourths at least of the area of any such pound shall not be scraped or swept once in every twenty-four hours at the least, or otherwise kept clean and in good order, and with a sufficiency of wholesome water for the cattle which from time to time shall be kept therein; or if any pound keeper shall take upon himself to administer any oath; every such pound keeper shall, upon conviction of any such offence or neglect, forfeit and pay a sum not exceeding five pounds.

Cattle distrained shall be impounded in the nearest Pound; and within the same Barony and County.

VIII. And be it further enacted, That all or any cattle, of whatever description they may be, which shall be seized and distrained for the purposes of being impounded, in order to secure and enforce the payment of any rent, or to levy the amount of any decree of court, or for any trespass or other matter whatsoever, shall be driven to and shall be impounded in the pound overt which shall be situate next and nearest to the land upon which such cattle shall have been so distrained, and within the same barony and county, to be then and there dealt with according to law.

Where there is a Manor Pound, Cattle may be impounded in such Manor Pound.

IX. Provided always, and be it enacted, That in all cases where there shall be a manor pound appertaining or reputed to appertain to any particular manor or estate, all or any cattle which shall be seized and

No. XXVII. 7 Geo. IV. c. 42.

distrained on any land belonging or reputed to belong to such manor or estate, shall and may be impounded in the manor pound of such manor estate.

Penalty on Persons impounding cattle contrary to this Act, not exceeding 5*l.*

X. And be it further enacted, That if any cattle distrained shall be impounded in any pound contrary to the direction and provisions of this Act, every person so offending shall, upon conviction, be liable to forfeit and pay any sum not exceeding five pounds for each such offence,

Penalties under this Act, and all Damages not exceeding 10*l.* against Pound Keepers for neglect, may be recovered before two Magistrates in Petty Sessions on Complaint within one Month.

XI. And be it further enacted, That all penalties incurred under this Act, by any person who shall be guilty of any offence against this Act, and all damages not exceeding ten pounds, to which any pound keeper shall or may be subject, by reason or on account of neglect or default of such pound keeper, either in enlarging any cattle distrained and impounded, or in permitting any such cattle to be enlarged without sufficient authority for so doing, or by any neglect in his driving feeding or keeping any such cattle, or by any other neglect or default whatsoever of such pound keeper, shall and may be recoverable and recovered, on complaint of any person aggrieved, before two or more magistrates assembled in petty sessions, or reputed petty sessions, in the county in which such complainant shall reside, or in which the pound shall be situate; and it shall be lawful for such magistrates, and they are hereby authorized empowered and required to hear and determine such complaint; provided that such complaint shall be made to them within one calendar month next after the offence shall have been committed, or the cause of complaint shall have occurred; and it shall be lawful for such magistrates to issue their warrant for levying any such penalty or sum of money within the sum limited by this Act, with reasonable costs of such levy, by distress and sale of the goods and chattels of the offender, rendering the overplus (if any) to the owner.

Appeal to General Quarter Sessions.

Notice of Appeal.

Security for prosecuting Appeal,

XII. Provided always, and be it enacted, That it shall and may be lawful for any person who shall think himself or herself aggrieved by the decision of such two or more magistrates, to appeal against the conviction of such two or more magistrates to the next Quarter Sessions of such county; and such appeal shall be tried and finally determined at such Quarter Sessions accordingly; provided that notice in writing of such intention to appeal, and sufficient securities, conditioned for duly prosecuting such appeal, shall be given to the magistrates before whom such conviction shall be had, at the time of their decision upon the particular case; and in case of such notice of appeal and such security being given in manner aforesaid, it shall not be lawful for such magistrates to issue their warrant for levying such penalty or sum of money.

Penalties how disposed of.

XIII. And be it further enacted, That all penalties damages and sums of money, incurred and levied under and by virtue of this Act, shall be payable and paid to the person or persons who shall sue for such penalties or damages, upon conviction of the offenders in manner required by this Act.

[No. XXVII.] 7 George IV. c. 42.—An Act to amend the Laws in force in *Ireland* for preventing the vexatious Impounding of Cattle for Trespass or Damage feasant.—[26th *May* 1826.]

WHEREAS an Act was passed in the Parliament of *Ireland* in the fortieth year of the reign of His late Majesty King *George* the Third, for amending and rendering more effectual an Act passed in the thirty-seventh year of His said late Majesty's reign, intituled *An Act to prevent vexatious Impounding of Cattle for Trespass or Damage feasant:* and it is expedient to render the provisions of the said Act of the said fortieth year more effectual; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assem-

37 G. III. (I.)

No. XXVII. 7 Geo. IV. c. 42.

bled, and by the authority of the same, That it shall and may be lawful for the magistrates assembled at any Quarter Sessions or adjournment thereof, which shall be holden at any time after the passing of this Act, in or for any county, county of a city, or county of a town in *Ireland*, or any barony, half barony, or subdivision thereof, not less than three such magistrates being present, to nominate and appoint any number of persons not exceeding three, resident in each and every parish in such county, county of a city, or county of a town, to act as appraisers and arbitrators in the execution of this Act in such parish, or in such number of adjacent parishes, as such magistrates shall define and fix; and it shall and may be lawful for such magistrates so assembled from time to time in their Quarter Sessions, not less than three being present, to suspend or remove all or any of such appraisers and arbitrators, and to appoint others in their room, and also to fix and appoint the quantum or rate of fee or remuneration to be paid to such appraisers and arbitrators in the execution of their duty, and to alter and vary the amount thereof from time to time; and every person appointed to be such appraiser and arbitrator, before taking upon him such office, shall take and subscribe the following Oath:

Magistrates at Sessions in Ireland may appoint Persons to be Appraisers and Arbitrators of Damages arising from Trespass; and suspend or remove them; and fix or alter their Fees.

'I *A. B.* of *C. D.* in the parish of *E.* do swear, That I will, when 'called upon, justly and honestly appraise and value and arbitrate 'with respect to all matters relating to the trespassing and damage 'feasant of animals of any description; and that I will faithfully and 'honestly perform all other the duties of an appraiser and arbitrator, 'according to an Act made in the seventh year of the reign of King 'George the Fourth, intituled [*here set forth the title of this Act*]; and 'that I will not accept or take any fee or reward for executing such 'duty, save and except what I shall be entitled to under the provisions 'of said Act. So help me God.'

Oath of Appraiser and Arbitrator.

Which Oath it shall be lawful for any magistrate within his jurisdiction to administer in open court at any Petty Sessions, or reputed Petty Sessions, in any barony or half barony, or other division of a county, county of a city, or county of a town, and such oath shall be registered and recorded at such Petty Sessions or reputed Petty Sessions; and every person so appointed shall be liable to be so called upon, and shall attend accordingly, to appraise and to arbitrate and decide between parties in cases of complaint of injury arising from animals of any description trespassing or damage feasant; and also in all cases of disputes and complaints as to the state of the fences arising under the said recited Act or this Act.

Arbitrator shall attend when called upon.

II. And, in order to avoid the impounding of cattle, be it further enacted, That where animals of any description shall be found trespassing or damage feasant, and the rates of damage to be paid for such trespass shall have been fixed by the magistrates in pursuance of the said recited Act, it shall be lawful for the person or persons entitled to such rates of damage, to take drive or send such animals to their owner, or the known steward or herdsman of the owner, or to show such owner, or the known steward or herdsman of such owner, the animal or animals actually in the act of trespassing and damage feasant; and if such owner, or the known steward or herdsman of such owner, shall be satisfied that such trespass has been actually committed, it shall be lawful for such owner and he is hereby required to pay such rates of damage so fixed, and in such cases the animals so trespassing shall not be impounded; but in case the owner of any such animal or animals, or some person on his behalf, shall not pay the amount of such fixed rate of damage, it shall and may be lawful for the party aggrieved by such trespass, instead of impounding them, to make his complaint to the magistrates assembled in Petty Sessions, or reputed Petty Sessions, for the district where the parties reside; and such magistrates shall summon the owner of the animals so trespassing, or the steward or herdsman of such owner, to appear before them; and it shall be lawful for such magistrates (after the time appointed by such summons for the appearance of the party complained against, whether the person so summoned shall appear or

In Cases of Trespass where the Rates of Damage are fixed, persons injured may take Cattle to the Owner, &c. who shall pay such Rates.

Remedy in case of Refusal.

not), upon proof of the service of such summons, to inquire and examine into the matter of such complaint; and upon satisfactory proof of such trespass, and of the neglect or refusal to pay the rate of damage for such trespass so fixed as aforesaid, to issue their warrant to levy such rate of damage for such trespass, together with such reasonable costs for loss of time, as such magistrates shall think fit to be paid to the plaintiff, unless it shall appear to the satisfaction of such magistrates that the defendant had sufficient grounds to justify the non-payment of the rate of damage for such trespass.

Where the Damage for any particular Description of Trespass shall not have been rated, &c. Complainant may call upon Arbitrators to estimate and certify the Amount of Damages.

III. And be it further enacted, That in all cases where it shall happen that the rate of damage for any particular description of trespass, which shall be the subject of any complaint between parties, shall not have been fixed by the magistrates in manner required by the said recited Act, or where any damage so complained of shall exceed in its nature and amount the rates so fixed, or where the neglect or refusal to pay any demand on account of trespass or damage as aforesaid shall arise out of the neglect or refusal of the complainant to keep his fences in a proper state of repair, or where the owner or owners of the animals complained against as having been trespassing or damage feasant shall neglect or refuse to appoint or concur in the appointment of arbitrators pursuant to the provisions of the said recited Act, for the space of twenty-four hours after complaint made, then and in any or either of such cases it shall and may be lawful for the person or persons making such complaint as aforesaid to call upon any person, who shall have been appointed under the authority of this Act to be an appraiser and arbitrator in or for the barony parish or place within which such trespass or damage shall be alleged to have been committed; and such appraiser and arbitrator shall proceed without delay to view the place, and to inquire into the matter, and to estimate the amount of a fair and reasonable compensation to be paid for such damage, and to view the state of the fences between the parties, and to ascertain and determine by whose neglect or refusal such trespass and the damage arising therefrom shall have been committed and caused; and such appraiser and arbitrator shall give a certificate in writing, signed with his hand, of the amount of damage incurred, and specifying by whose act or neglect such damage was caused, and also his opinion of the state of the fences, and by whom the same ought to be repaired.

Magistrates at Petty Sessions may levy such Damage by Distress.

IV. And be it further enacted, That in case the amount of such damage so certified shall not be paid by the person stated in such certificate to be liable to pay the same, it shall and may be lawful for the person aggrieved to apply to the magistrates assembled at the Petty Sessions, or reputed Petty Sessions, not less than two of such magistrates being present, and such magistrates shall summon the parties to appear before them, and shall examine into and determine the matter of such complaint; and if they shall be of opinion that the award and certificate of such appraiser and arbitrator is just and equitable, such magistrates shall issue their warrant to cause the amount of damage so specified in such certificate, together with reasonable costs for loss of time, to be levied by distress and sale of the goods of the offender, and to be paid to the party aggrieved; rendering the overplus, if any, to such offender.

Manner of Proceeding where Damage occurs from bad Fences.

V. And be it further enacted, That whenever it shall appear that the trespassing or damage feasant of animals of any description, or any injury relating thereto, shall be occasioned to or suffered by any person or persons in consequence of the bad or imperfect state or destruction of any fences, and the person aggrieved thereby shall, pursuant to the provisions of the said recited Act or this Act, have laid his complaint before a magistrate, and arbitrators shall have been thereupon appointed under the said recited Act, or called upon to act under this Act, and shall have estimated the sum necessary for the repair of such fences, and the proportion of money to be paid, and also the proportion of fences to be kept in repair by each or any of the parties, and shall have certified the same to the magistrates, then and in every such case it shall be lawful for such magistrate, and he is hereby authorized and required to call upon such

arbitrators to add to their certificate a specification of the time within which every such party shall execute such repairs, and such arbitrators shall specify such time accordingly; and such magistrate, if he shall think fit, shall thereupon issue an order under his hand, requiring every such party to make or repair the fences, or proportion of fences, within such time so specified and fixed; and if either party shall neglect or refuse to make or repair such fences in manner and within the time so specified and required, it shall be lawful for such magistrate to order and authorize the other party forthwith to make or repair the whole of such fences so estimated; and the person who shall so repair the whole of such fences accordingly, shall and may apply to the magistrates assembled at any Petty Sessions, or reputed Petty Sessions, to recover the proportion of the expence incurred by him in respect of the party who shall have so made default; and the magistrates at such Petty Sessions, or reputed Petty Sessions, shall, in all cases where the sum awarded by them shall not exceed five pounds, issue their warrant to cause the same to be levied by distress and sale of the goods of the offender, and to be paid to the person aggrieved; and in all cases where the sum shall exceed five pounds, it shall and may be lawful for the said magistrates, and they are hereby required, to examine into the matter as in all other cases, and to give a certificate signed by them to either party, stating their opinion and decision on the case; and such certificate shall be admitted as evidence in the trial of any action which may be instituted in any court to recover such larger amount.

Where Persons impounding refuse to receive Compensation, or to appoint Arbitrators, Magistrate may hear Complaint, and give Costs to the Defendant.

VI. And be it further enacted, That whenever any person shall complain of damage sustained from animals trespassing or damage feasant, or by reason of the want or insufficiency of fences, and it shall appear that such person so complaining shall have been offered a fair and reasonable compensation for such trespass, and shall have refused the same, and shall have refused or neglected to appoint or to concur in appointing arbitrators, and shall nevertheless persist in impounding such animals, it shall and may be lawful for the magistrates, before whom such complaint shall be made, to hear and determine such complaint, and to allow and order any reasonable costs to be levied and paid to the party aggrieved by such refusal or neglect of the party complaining; and in case of neglect or refusal to pay such costs, to issue their warrant, and to cause the same to be levied by distress, to be paid to the party aggrieved accordingly.

Where Party against whom any Order is made neglects to pay within 24 Hours, Distress shall issue.

VII. And be it further enacted, That in all cases of dispute relating to trespass or damage feasant, in which any magistrate or magistrates shall have made any order for the payment of any sums of money pursuant to the provisions of the said herein-before recited Act or this Act, if any person against whom such order shall have been made shall neglect or refuse to pay the amount required by such order for the space of twenty-four hours next after such order made, or within such further time as such magistrates shall fix or appoint, it shall be lawful for the magistrates so making such order to issue his or their warrant to cause the amount to be levied by distress and sale of the goods of the offender, together with such reasonable costs as to such magistrates shall seem meet, to be paid to the person or persons in whose favour such order shall have been made.

Magistrates may order Payment of Arbitrators, either by Plaintiff or Defendant.

VIII. And be it further enacted, That it shall and may be lawful for any magistrate or magistrates in the execution of this Act, to order the rate of payment which shall be fixed by the magistrates at the several Quarter Sessions for the remuneration of the appraisers and arbitrators appointed under this Act for the execution of their duty, to be paid either by the plaintiffs or defendants, as such magistrates shall think fit, in the several matters of dispute, and to issue their warrant to compel payment accordingly.

Appeal to Quarter Sessions.

IX. Provided always, and be it further enacted, That it shall and may be lawful for any person who shall think himself aggrieved by any order or decision of such magistrates, to appeal against their decision to the next Quarter Sessions of the county, and such appeal shall be tried and

No. XXIX. 7 & 8 G. IV. c. 69.

finally determined at such Quarter Sessions accordingly; and the Justices of Peace at such sessions may affirm or reverse any such order or decision of such magistrates, with such costs as they shall think proper: Provided always, that notice in writing of such appeal shall be given to the magistrates before whom such conviction or decision shall be had, at the time of their decision upon the particular case; and that sufficient security, conditioned for duly prosecuting such appeal, shall be given and entered into before such magistrates at the time of the making such appeal; and whenever such appeal shall be made, and such security given as aforesaid, it shall not be lawful for such magistrates to issue their warrant for levying of any penalty or sum of money in such particular case.

[No. XXVIII.] 7 & 8 George IV. c. 17.—An Act to extend the Provisions of an Act made in the Fifty-seventh Year of King *George* the Third, for regulating the Costs of certain Distresses.—[28th *May* 1827.]

WHEREAS by an Act passed in the fifty-seventh year of the reign of His late Majesty King *George* the Third, intituled *An Act to regulate the Costs of Distresses levied for payment of small Rents*, certain regulations are made with respect to the costs and charges of levying and disposing of such distresses where the sum demanded and due shall not exceed twenty pounds; and whereas it is expedient that the said Act should be amended, by extending the same to distresses for other causes; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, all the rules, regulations, clauses, provisions, penalties, matters, and things in the said Act contained, shall extend and be construed to extend, and shall be applied and put in execution, so far as the same are applicable and capable of being put in execution, with respect to any distress or levy which shall be made for any land tax, assessed taxes, poor's rates, church rates, tithes, highways, rates, sewer rates, or any other rates, taxes, impositions, or assessments whatever, in all cases where the sum demanded and due for or in respect of such taxes, rates, tithes, assessments, or impositions, shall not exceed the sum of twenty pounds, and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds; and that such costs and charges, and no other, shall be taken and payable as the costs and charges of the levy and disposition of such distresses; and that all such proceedings shall and may be had and taken against any and every person transgressing the regulations of the said Act in the levying or distraining for any such taxes, rates, impositions, or assessments; and all such persons shall be liable to and shall incur such and the like penalties, as by the said Act are directed required and imposed, with respect to persons making any distress for rent contrary to the directions of the said Act; and that in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this Act, such order shall be expressed to be made upon a complaint for the breach of the said recited Act as amended by this Act; and that the said recited Act and this Act shall be taken and construed together as one Act, to all intents and purposes whatsoever.

57 G. III. c. 93.

Provisions of recited Act extended to Distresses for Taxes, Rates, Tithes, &c.

[No. XXIX.] 7 & 8 George IV. c. 69.—An Act to provide for the Relief of Persons aggrieved by unlawful or excessive Distresses in *Ireland*.—[2d *July* 1827.]

WHEREAS the expence of suing out and trying replevins in *Ireland* is far beyond the means of persons usually occupying small tene-

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ments or farms, and such persons may therefore frequently be subject to injustice and oppression; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, in all cases where any distress shall be made in *Ireland* for any rent, proportion of rent, or arrears of rent, where the annual amount of such rent shall not exceed the sum of ten pounds, it shall and may be lawful for any one or more Justice or Justices of the Peace in *Ireland*, within his or their jurisdiction or districts within which the distress shall have been made, or the cattle goods or chattels shall have been distrained or impounded, or for any two or more Justices assembled at any Petty Session or reputed Sessions within such districts, to take cognizance of and to examine into any complaint which shall be made against any person impounding any cattle or distraining any goods or chattels for such rent, or any arrears thereof, setting forth that when such distress was taken, that there was either no rent due, or that there was less rent due than was claimed by the person on whose behalf such distress was made; and if upon such examination such Justice or Justices shall be of opinion that such complaint is well founded, it shall be lawful for such Justice or Justices to issue his or their summons, requiring the party complained against to attend and appear at the next or any subsequent Petty Session to be held in and for such district, at such time and in such place within such district as shall for that purpose be named in such summons, there to show cause before the Justices of Peace there assembled, why replevin and deliverance of such distress should not be made to such complainant by virtue of this Act, and according to the regulations herein contained.

Where a Distress is made for Rent not exceeding 10*l.* on Complaint to Justices that it is unlawful, they may issue Summons to Party complained against, to show Cause why Replevin should not be made.

II. And be it further enacted, That it shall be lawful for the Justices of the Peace (two at least being present) at any such Petty Sessions at which the party complained against shall be so summoned to attend and appear, and such Justices are hereby authorized and required (the service of such summons having been first satisfactorily proved, and whether the party complained against shall or shall not attend and appear) to hear such complaint, and to examine into the truth of the same, and to inquire into and ascertain the amount of the rent or arrears of rent actually due, upon the oath of the complainant, or any other person or persons; and if it shall be made appear to such Justices that either no rent was due, or that such distress was taken for a larger sum than was actually due, it shall and may be lawful for such Justices, and they are hereby required to order the replevin, and deliverance shall be made of the cattle goods or chattels so distrained, to the person or persons so complaining, by the pound keeper or other person in whose custody the cattle goods or chattels so distrained shall be; and such order or replevin and deliverance shall be returnable to the Justices at the next General Quarter Sessions to be holden for the county, division, city, town or place within which such distress shall have been taken or made, or such cattle goods or chattels shall have been impounded, to be then and there tried and disposed of in manner herein-after directed; and such order of replevin and deliverance shall be in the form or to the effect hereafter specified and set forth.

Justices at Petty Sessions may grant Order for Replevin, to be returnable to the next Quarter Sessions.

III. Provided always, and be it enacted, That it shall and may be lawful for such Justices at such Petty Sessions, upon the hearing of such case, to adjudge the payment of any sum which they may think justly due; and if payment of such sum shall not be made accordingly, or shall not be received by the party on whose behalf such distress shall have been made, it shall and may be lawful for such Justices at such Petty Sessions either to grant or to refuse to grant such order of replevin or deliverance, according as they shall think just and fit.

Justices may adjudge the Payment of a smaller Sum.

IV. Provided always, and be it enacted, That it shall not be lawful for the Justices at any such Petty Sessions to make any such order for replevin and deliverance of any such distress, unless nor until the party

Justices shall not make Order for Replevin until Recognizances and Sureties are given.

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complaining shall at such Petty Sessions have entered into recognizance in double the amount of the rent or arrears of rent which may appear to such Justices to be due, with two sufficient sureties, conditioned to abide the decision upon such case at the next ensuing Quarter Sessions.

Form of Recognizance, and Order of Replevin.

V. And be it further enacted, That every recognizance to be taken before such Justices of the Peace, before making any order for the replevin and deliverance of any cattle goods or chattels distrained, and every order for replevin and deliverance of such cattle goods or chattels which shall be made by such Justices at Petty Sessions, shall be in the form or to the effect following respectively; (that is to say),

FORM OF RECOGNIZANCE.

'KNOW all men by these presents, That we *A. B.* principal, and *C. D.* of and *E. F.* of sureties, do hereby acknowledge ourselves to be held and firmly bound to [*G. H. the person or persons making the distress*], his [*or* her] heirs executors or administrators, in the sum of [*being double the sum ascertained by the Justices at Petty Sessions to be due*], for the true payment of which we do hereby bind ourselves and each of us, and our and each of our heirs executors and administrators. Sealed with our seals, and dated this day of .

'The condition of the above recognizance is, that if the said *A. B.* shall appear at the next General Quarter Sessions to be held at [*name the place*], and shall then and there abide any suit to be brought against him by or on behalf of [*I. K. the person by whom or on whose behalf the rent is claimed*], for the sum of [*specify the sum*], claimed as rent or arrears of rent due to the said *I. K.*, and if the said *A. B.* shall well and truly satisfy and pay such sum of money and costs, as shall at such Quarter Sessions be decreed or awarded to be due from the said *A. B.* to the said *I. K.*, then this recognizance shall be null and void, otherwise to remain in full force and effect in law.

'Taken before us, *L. M.* } Justices of *N. O.* } Peace.

A. B. (seal) Principal.
C. D. (seal) } Sureties.
E. F. (seal) }

FORM of ORDER for Replevin and Deliverance.

'WE, the undersigned *L. M.* of and *N. O.* of , Justices of the Peace, at a Petty Sessions, [*or* reputed Petty Sessions] held this day at having duly and carefully examined into the complaint of *A. B.* [*the person whose goods have been distrained for rent,*] and being of opinion that at the time such distress was made, that the sum claimed as rent or arrears of rent from the said *A. B.* was not justly due; and the said *A. B.* having entered into recognizance with two sufficient sureties in double the amount which appears to us to be justly due, conditioned to abide the trial or suit to be instituted in such case at the next General Quarter Sessions to be held at , and fully to satisfy and pay whatever sum and costs shall be awarded and decreed to [*I. K. the person by whom or on whose behalf the rent is claimed*]; We do hereby order and decree, That replevin and deliverance shall be made by you, the undernamed pound keeper, or keeper of the cattle [*or* goods or chattels] so distrained, to the said *E. F.* of the said cattle [*or* goods and chattels] so distrained; that is to say, [*here specify the cattle or goods or chattels so distrained*]: and for your so doing, this shall be your sufficient authority. Given under our hands and seals, this day of .

L. M. } Justices.'
N. O. }

'To *P. Q.* Pound keeper, or other Keeper of the Cattle or Goods or Chattels distrained.'

Pound Keeper served with a Copy of Order signed by Justice or the Clerk of Petty Sessions, shall deliver up the Distress.

VI. And be it further enacted, That it shall be lawful for the pound keeper or other keeper of any cattle goods or chattels so distrained, in whose custody such cattle goods or chattels shall be, such pound keeper or other person being served with a copy of such order for replevin and

deliverance as aforesaid, certified by the signature of one of the Justices, under whose authority such order shall be made, or by the clerk of the Petty Sessions, and every such pound keeper or other person as aforesaid is hereby authorized empowered and required to deliver up the cattle goods or chattels specified in such order, to the person or persons from whom they shall have been distrained as aforesaid.

Penalty for not delivering Cattle, Goods, or Chattels.

VII. And be it further enacted, That any and every pound keeper or other person as aforesaid so served with such copy of such order certified as aforesaid, who after tender made to him of his lawful fees shall neglect or refuse to deliver up such cattle goods or chattels, to the person or persons from whom they shall have been distrained as aforesaid, shall forfeit and pay a sum not exceeding the sum of ten shillings for every twenty-four hours during which such pound keeper or other person shall detain such cattle goods or chattels in his custody, after he shall have received such copy of such order of replevin as aforesaid; and it shall be lawful for the magistrates by whom such order was made at the Petty Sessions aforesaid, to issue their warrant to levy such penalty, and to pay the same to the person aggrieved by the detention of such cattle goods or chattels as aforesaid.

Justices shall lodge original Recognizances with Clerk of the Peace Three Days before the Quarter Sessions.

VIII. And be it further enacted, That the Justices of the Peace making any such order as aforesaid shall lodge and deliver, or cause or direct to be lodged and delivered, any and every original recognizance, and any and every original order for replevin and deliverance, which shall be taken before and shall be made by such Justices in the execution of this Act, to the Clerk of the Peace or acting Clerk of the Peace for the county, district, city, town or place where such Quarter Sessions shall be holden, three days (if practicable) previous to the first day of such Quarter Sessions, or the adjournment thereof, next after the making of any and every such order respectively, but so that there shall be at least two clear days between the delivery of every such recognizance and order to the Clerk of the Peace, and the first day of such Quarter Sessions or adjournment; and such Clerk of the Peace shall keep and dispose of all such recognizances and orders under the direction and regulation of the assistant Barrister there presiding for the furtherance of justice.

Validity of such Orders of Replevin shall be tried by Assistant Barrister, at Sessions, as Cases of Replevin.

IX. And be it further enacted, That the validity and effect of all such orders of replevin and deliverance of distress as shall be made pursuant to the directions of this Act shall be tried and determined by and before the assistant Barrister, or acting assistant Barrister, or Chairman presiding at such Quarter Sessions, and he is hereby authorized and required to examine into and ascertain the question whether any and how much rent was due (at the time of such distress having been made), in a summary manner, in the nature of a civil bill, upon the application of either of the parties concerned, whether the other party shall attend or not; and on such trial, the party on whose behalf any such order of replevin shall have been made shall be taken and considered in the nature of a plaintiff in replevin, and the party on whose behalf such distress was made shall be taken and considered in the nature of a defendant or avowant in replevin; and such assistant Barrister or Chairman shall have such jurisdiction, and such power of summoning witnesses, and of compelling their attendance, as are or may by law be given to or vested in such assistant Barrister or Chairman in and for the trial of actions by civil bill, or of ejectments under any Act or Acts in force in *Ireland*; any law usage or custom to the contrary in anywise notwithstanding.

Assistant Barrister may give Judgment and Decree for Rent due and Costs.

X. And be it further enacted, That it shall be lawful for such assistant Barrister or Chairman, and he is hereby authorized empowered and required, upon any trial or determination in respect of any such order for replevin and deliverance, to make sign and give a judgment and decree against the goods and persons of the principal and sureties, or any of them, in any such recognizance, for any such rent or sum as such assistant Barrister or Chairman shall adjudge to be due to the person or persons on whose behalf such distress shall have been made, at the time when such distress was made, whether such rent or arrears shall or shall not exceed the sum of ten pounds, with reasonable costs of suit, to be paid to

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such person or persons; and if it shall appear to such assistant Barrister or Chairman, upon such trial and examination as aforesaid, that no rent or arrears of rent were due at the time of such distress, or that no more rent was due than was ascertained by the magistrates upon the hearing of the complaint at the Petty Sessions aforesaid, it shall and may be lawful for such assistant Barrister or Chairman, and he is hereby authorized and required to sign a decree of dismiss against the party on whose behalf such distress was made, with reasonable costs of suit, to be levied on his person or goods, and to be paid to the person who obtained such order of replevin and deliverance, in manner herein-before directed by this Act.

Appeal from Decree of Assistant Barrister.

XI. And be it further enacted, That in case either of the persons so being in the nature of plaintiff or defendant or avowant in replevin as aforesaid, shall think himself or themselves aggrieved by the judgment decision or decree of any assistant Barrister or Chairman of the Sessions, it shall and may be lawful for any such party to appeal to the next going Judge of Assize for the county city or town within or for which such Quarter Sessions shall be held, or within the county of *Dublin*, to the Chief Justice of the Court of King's Bench or Common Pleas, or to the Chief Baron of the Exchequer, or other Judge of Nisi Prius for the city of *Dublin*, in like manner as appeals may by law be made in civil bill cases; and it shall be lawful for such Judge of Assize, and he is hereby authorized empowered and required to try and determine the matter of such appeal, and the decision of such Judge shall be final and conclusive in the particular case upon all parties.

On such Appeal the Appellant shall give Security.

XII. Provided always, and be it enacted, That it shall not be lawful to appeal from any such decision judgment or decree of any such assistant Barrister or Chairman as aforesaid, unless the party intending to appeal shall give security forthwith, or within twenty-four hours next after such decision judgment or decree shall be given, to the satisfaction of the assistant Barrister or Chairman whose decision or decree shall be sought to be contravened, duly to prosecute such appeal, and to bring the matter at issue to a final hearing before the next going Judge of Assize or other Judge as aforesaid.

No Proceedings under this Act in case of Ejectment previous to Complaint.

XIII. Provided also, and be it enacted, That it shall not be lawful for any person to proceed under the authority of this Act in any case where an ejectment shall have been brought for the nonpayment of the rent distrained for, previous to complaint having been made under this Act to the magistrates at their Petty Sessions as aforesaid; any thing herein before contained to the contrary in anywise notwithstanding.

Act shall not extend to Crown Rents, &c.

XIV. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to any distress made for any crown rent, quit rent, composition rent, chief rent, or fee farm rent whatever, nor to any distress for any rent payable under any lease demise or contract for ever, or for lives renewable for ever, or for nine hundred and ninety-nine years.

PART IV.

CLASS XX.

PART IV.

CLASS XX.

Actions against Justices of Peace and other Officers.

[No. I.] 7 James I. c. 5.—An Act for Ease in pleading troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office.

7 James I. c. 5. The Plea of an Officer impleaded for the Execution of his Office.

'FOR ease in pleading against many causeless and contentious suits which have been and daily are commenced and prosecuted against justices of peace, mayors, or bailiffs of cities and towns corporate, headboroughs, port-reves, constables, tithingmen, collectors of subsidies and fifteens, who for due execution of their office have been troubled and molested, and still are like to be troubled and molested by evil disposed contentious persons, to their great charge and discouragement in doing of their offices;' Be it therefore enacted by our Sovereign Lord the King, and by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any action, bill, plaint, or suit, upon the case, (1) trespass, battery, or false imprisonment, shall be brought after forty days next after the end of this Session of Parliament, in any of his Majesty's courts at *Westminster* or elsewhere, against any justice of peace, mayor, or bailiff of city or town corporate, headborough, port-reve, constable, tithingman, collector of subsidy or fifteens, for or concerning any matter cause or thing by them or any of them done, by virtue or reason of their or any of their office or offices, That it shall be lawful to and for every such justice of peace, mayor, bailiff, constable, or other officer or officers before named, and all others which in their aid or assistance, or by their commandment shall do any thing touching or concerning his or their office or offices, to plead the general issue, that he or they are not guilty, and to give such special matter in evidence to the jury which shall try the same; which special matter being pleaded had been a good and sufficient matter in law to have discharged the said defendant or defendants of the trespass, or other matter laid to his or their charge: And that if the verdict shall pass with the said defendant or defendants in any such action, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, That in every such case the justice or justices, or such other judge before whom the said matter shall be tried, shall by force and virtue of this Act allow unto the defendant or defendants his or the double costs, (2) which he

Defendant allowed double Costs of Suit.

(1) This Act, and 21 Jac. c. 12, sec. 3, only extend to actions of tort, not to assumpsit, brought against an overseer for maintenance of a pauper; Atkins *v.* Banwell, 3 East. 92.

(2) To entitle a defendant to double costs under this Act there must be a certificate from the judge; Grindley *v.* Holloway, Doug. 307. It may be granted either at the trial or after; Harper *v.* Carr, 7 T. R. 418: but such certificate is not necessary if the fact appear on a special verdict. Raun *v.* Pickins, Doug. 309, n. See Rex *v.* Poland, 1 Str. 49; Devenish *v.* Mertins, 2 Str. 974.

Parish officers, or persons acting on their behalf, are not entitled, under statutes 1 Jac. I. c. 5, and 21 Jac. I. c. 12, to double costs upon judgment, as in case of a nonsuit in an action brought against them for the price of goods sold and delivered to them for the use of the poor; Blanchard *v.* Bramble, 3 M. & S. 131.

It may be convenient to take this opportu-

No. I. 7 James I. c. 5.

or they shall have sustained by reason of their wrongful vexation in defence of the said action or suit; for which the said defendant or defendants shall have like remedy as in other cases where costs by the laws of this realm are given to the defendants. And this Act to continue for seven years, and from thence to the end of the next Parliament after the said seven years.

Continuance of this Act.

[No. II.] 21 James I. c. 12.—An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign. (1)

'WHEREAS, an Act, intituled, *An Act for Ease in Pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign of* England, was made to continue but for seven years, and from thence to the end of the next Parliament, after the said seven years, which by experience hath since been found to be a good and profitable law;'

21 James I. c. 12.

The statute of 7 Jac. 1. c. 5, enlarged and made perpetual.

II. Be it therefore enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That the said Act shall, from and after the end of this present session of Parliament, be perpetual, and have continuance for ever.

III. And be it further enacted by the authority aforesaid, That all churchwardens, and all persons called sworn men, executing the office of churchwardens, and all overseers of the poor, and all others which in their aid and assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, shall hereafter be enabled to receive and have such benefit and help by virtue of the said Act, to all intents, constructions, and purposes, as if they had been specially named therein.

Churchwardens and overseers comprehended within 7 Jac. 1. c. 5.

'IV. And whereas notwithstanding the said statute, the plaintiff is at liberty to lay his action which he shall bring against any justice of peace, or other officer, in any foreign county at his choice, which hath proved very inconvenient unto sundry of the officers and persons aforesaid, that have been impleaded by some contentious and troublesome persons in countries far remote from their places of habitations:'

V. Be it therefore further enacted by the authority aforesaid, That if any action, bill, plaint, or suit upon the case, trespass, battery, or false imprisonment, shall be brought after the end of this present session of Parliament, against any justice of peace, mayor, or bailiff of city or town corporate, headborough, port-reve, constable, tithingman, collector of subsidy or fifteens, churchwardens, and persons called sworn men, executing the office of churchwarden or overseer of the poor, and their deputies, or any of them, or any other which in their aid and assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause, or thing, by them or any of them done by virtue or reason of their or any of their office or offices, that the said action, bill, plaint, or suit, shall be laid within the county where the trespass or fact shall be done and committed, and not elsewhere; and that it shall be lawful

An action brought against an officer shall be laid in the county where the fact was committed.

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nity of observing, that double costs are held to mean common costs with the addition of one half; treble costs, common costs with the addition of three-fourths.—Therefore, if single costs are 20*s.* double costs are 30*s.* and treble costs 35*s.*

(1) See notes to the last number.

No. II. 21 James I. c. 12.

to and for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the jury which shall try the same, as in or by the said former Act is limited or declared: And that if upon the trial of any such action, bill, plaint, or suit, the plaintiff or plaintiffs therein shall not prove to the jury which shall try the same, that the trespass, battery, imprisonment, or other fact or cause of his, her, or their such action, bill, plaint, or suit, was or were had, made, committed, or done, within the county wherein such action, bill, plaint, or suit shall be laid: that then, in every such case, the jury which shall try the same, shall find the defendant and defendants in every such action, bill, plaint, or suit, not guilty, without having any regard or respect to any evidence given by the plaintiff or plaintiffs therein, touching the trespass, battery, imprisonment, or other cause for which the same action, bill, plaint, or suit, is or shall be brought: And if the verdict shall pass with the defendant or defendants in any such action, bill, plaint, or suit, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the defendant or defendants shall have such double costs, and all other advantages and remedies, as in and by the said former Act is limited, directed, or provided.

The defendant shall have double costs.

[No. III.] 24 George II. c. 44.—An Act for the rendering Justices of the Peace more safe in the Execution of their Office; and for indemnifying Constables and others acting in obedience to their Warrants.

24 George II. c. 44.

No writ to be sued against any justice for what he shall do in the execution of his office, till notice given him;

'WHEREAS justices of the peace are discouraged in the execution of their office by vexatious actions brought against them for or by reason of small and involuntary errors in their proceedings: And whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust: And whereas it is also necessary that the subject should be protected from all wilful and oppressive abuse of the several laws and statutes committed to the care and execution of the said justices of the peace;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June*, One thousand seven hundred and fifty-one, no writ shall be sued out (1) against, nor any copy of any process, at the suit of a subject, shall be served on any justice of the peace for any thing by him done in the execution of his office, (2) until notice in writing of such intended writ (3)

(1) After opposite decisions upon the subject it is now settled that the Act does not extend to actions of replevin. See Fletcher *v.* Wilkins, 6 East. 283, where the question is very fully discussed.

(2) In Weller *v.* Toke, 3 East. 364, this was ruled to extend to an action against a justice of peace, for a commitment without the concurrence of another justice, in a case where such concurrence was necessary. And by Lord Ellenborough,—"It is not denied that the defendant had authority to act as a magistrate upon the subject matter of the complaint brought before him, though he could not act alone. Though the act of commitment, therefore, cannot be said to be done by virtue of his office, yet the subject-matter was within his jurisdiction, and he intended to act as a magistrate at the time, however mistakenly. The very object of the legislature, in requiring the notice to be given was, to enable the magistrate to tender amends as for the wrong done, contemplating him as a wrong-doer. If this had been an act wholly alien to his jurisdiction, I should have said that he acted without the protection of the law."

(3) The notice must specify the particular writ intended to be sued out; Lovelace *v.* Curry, 7 T. R. 631.

In Daniel *v.* Wilson, 5 T. R. 1, (which depended upon stat. 23 George III. c. 70. s. 30, *post.*, respecting officers of excise) an action of assault was brought against an officer who acted upon a sudden surprise, the plaintiff being supposed to be engaged in a smuggling transaction; and it was ruled that he was entitled to the be-

or process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, at least one calendar month (1) before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action (2) which such party hath or claimeth to have against such justice of the peace; (3) on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, (4) who shall be entitled to have the fee of twenty shillings for the preparing and serving such notice, and no more.

he may tender amends;

II. And be it further enacted, That it shall and may be lawful to and for such justice of the peace, at any time within one calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to his or her agent or attorney; and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea, with the leave of the court; and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants upon demurrer, such justice shall be intitled to the like costs as he would have been entitled unto in case he had pleaded the general issue only; and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants on such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he or she shall recover, together with his or her costs of suit.

and plead the same in bar, &c.

Plaintiff not to recover without proof of notice.

III. And be it further enacted, That no such plaintiff shall recover any verdict against such justice in any case where the action shall be grounded on any act of the defendant, as justice of the peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof such justice shall recover a verdict and costs as aforesaid.

Justice may pay money into court.

IV. And be it further enacted by the authority aforesaid, That in case such justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit; whereupon such proceedings, orders, and

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nefit of the Act. And per Curiam,—"The Act was clearly intended to protect such officers, as acting in the *bona fide* discharge of their duty were inadvertently guilty of excesses beyond the strict line of their duty, and though the defendant's conduct was perhaps too hasty, yet it manifestly appears that he acted in the supposed execution of his office, however illegally; and that is sufficient to bring the case within the protection of the statute." The lord of a manor, who is also a justice of peace, is entitled to notice in an action for taking away a gun from an unqualified person, as it will be presumed that he acted as a justice; Biggs *v.* Evelyn, 2 H. B. 114. And in Greenaway *v.* Hurd, 4 T. R. 555, Lord Kenyon said,—"It has been frequently observed by the courts, that the notice directed to be given to justices and other officers, is of no use to them when they have acted within the strict line of their duty, and was only required for the purpose of protecting them when they intended to act within it, but by mistake exceeded it."

(1) The day of service is included in the time. Notice given on the 28th of April of an action commenced on the 28th of May is sufficient; Castle *v.* Burditt; 3 T. R. 623.

(2) Notice of an action on the case for false imprisonment is not sufficient when the action is brought in trespass, per Yates J.; Strickland *v.* Ward, 7 T. R. 631.

(3) In the notice required to be given to magistrates within 24 Geo. II. c. 44. of actions intended to be brought against them, it is not necessary to name all the parties meant to be included in the action, or to express whether the action is intended to be joint or several; Bax *v.* Jones, 5 Price, 168.

(4) Given under my hand *at Durham*, is not a sufficient notice of a residence at Durham. The statute has presented a form which must be implicitly followed, and it admits of no equivalent; Taylor *v.* Fenwick, cited 7 T. R. 635; 3 B. & P. 553, n. An Indorsement, "J. S. of Birmingham," is sufficient; Osborn *v.* Gough, 3 B. & P. 551.

No. III. 24 George II. c. 44.

judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

V. And be it further enacted, That no evidence shall be permitted to be given by the plaintiff on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

Action not to be brought against constable till demand made of copy of warrant, &c.

VI. And be it further enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June*, One thousand seven hundred and fifty-one, no action (1) shall be brought against any constable, headborough, or other officer, (2) or against any person or persons acting by his order and in his aid, for any thing done in obedience (3) to any warrant, (4) under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, (5) signed by the party (6) demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six (7) days after such demand; and in case after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant, defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices; and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then on proof of such warrant the jury shall find for such constable, headborough, or other officer, and for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid.

Action wilfully committed, double costs.

VII. Provided always, That where the plaintiff in any such action against any justice of the peace shall obtain a verdict, in case the judge before whom the cause shall be tried, shall in open court certify on the back of the record, that the injury for which such action was

(1) As to Replevins, see N. 1, p. 188. In Feltham *v.* Terry, B. N. P. 24, it was held that the statute only extends to actions of tort, and not to assumpsit, to recover money levied on a conviction which has been quashed: but see Greenaway *v.* Hunt, 4 T. R. 553, mentioned in notes to the next number. See also Wallace *v.* Smith, 5 East, 115.

(2) An overseer executing a warrant of distress for a poor's rate is an officer within the Act; Nutting *v.* Jackson, B. N. P. 24; Harper *v.* Carr, 7 T. R. 270.

(3) An officer is not within the Act who arrests a wrong person; Money *v.* Leach, 3 Bur. 1742; or who executes the warrant in an improper manner, as by breaking open doors on a warrant to distrain for a poor rate; Bell *v.* Oakley, 2 M. and S. 259. Per Dampier J.—"Where the justice cannot be liable, the officer is not within the protection of the statute."

(4) If the warrant by a justice of the county is executed in a franchise out of the justice's jurisdiction, the officer is not entitled to the benefit of the Act; Milton *v.* Green, 5 East, 233. The constable is entitled to the benefit of the Act whether the warrant be legal or otherwise. So, if under a warrant to seize stolen goods of a certain kind, he seize goods which do not appear to have been stolen; Price *v.* Messenger, 2 B. and P. 158. See Entick *v.* Carrington, 2 Wils. 286.

(5) If there are two copies, the one served and the other kept, the production of the latter is sufficient, without giving notice to produce the other; Jory *v.* Orchard, 2 B. and P. 39.

(6) The signature of the attorney on behalf of the party is sufficient; Jory *v.* Orchard, 2 B. and P. 39.

(7) If the copy is delivered before the commencement of the action, although after the expiration of six days from the demand, it is sufficient; Jones *v.* Vaughan, 5 East, 445.

brought, was wilfully and maliciously committed, the plaintiff shall be intitled to have and receive double costs of suit.

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VIII. Provided also, and be it enacted by the authority aforesaid, That no action shall be brought against any justice of the peace for any thing done in the execution of his office, or against any constable, headborough, or other officer, or person acting as aforesaid, (1) unless commenced within six calendar months after the act committed. (2)

Limitation of actions.

[No. IV.] 23 George III. c. 70.—An Act for the more effectual preventing the illegal Importation of Foreign Spirits, and for putting a Stop to the private Distillation of *British*-made Spirituous Liquors; * * * * and for preventing vexatious Actions against Officers of Excise acting in pursuance of the Authority given by Excise Statutes.

23 George III. c. 70.

XXIX. AND be it further enacted by the authority aforesaid, That in case any information or suit shall be commenced and brought to trial, on account of the seizure of any goods, merchandizes, or commodities whatsoever, seized as forfeited by any Act or Acts of Parliament now in force, or hereafter to be made, relating to his Majesty's revenue of excise or inland duties, or of any ship, vessel, or boat, or of any horses or other cattle, or of any carriages used or employed in removing or carrying the same, wherein a verdict shall be found for the claimer thereof; and it shall appear to the judge or court before whom the same shall be tried, that there was a probable cause of seizure, the judge or court before whom the same shall be tried, shall certify on the record that there was a probable cause for the prosecutor seizing the said goods, merchandizes, commodities, ships, vessels, boats, horses, or other cattle, or carriages, as the case may be; and in such case the claimant shall not be entitled to any costs of suit whatsoever, nor shall the person who seized the said goods, merchandizes, or commodities, or the said ships, vessels, or boats, or the horses or other cattle or carriages, be liable to any action, indictment, or other suit or prosecution on account of such seizure; and that in case any action, indictment, or prosecution, shall be commenced and brought to trial, against any person or persons whatsoever, on account of the seizure of any such goods, merchandizes, or commodities, or of any ships, vessels, boats, horses, or other cattle or carriages, used and employed in removing or carrying the same, wherein a verdict shall be given against the defendant or defendants, if the court or judge before whom such action, indictment, or prosecution, shall be tried, shall certify on the said record, that there was a probable cause for such seizure, then the plaintiff, besides the thing so seized, or the value thereof, shall not be entitled to above twopence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above one shilling.

If the claimer gain a verdict, and it appear to the judge that the officer had probable cause of seizure, the claimant shall not be intitled to costs, &c.

'XXX. And, for the more effectual preventing vexatious suits 'against the officers of excise, and their assistants, acting under the 'authorities and powers to them given by the several statutes made for 'securing the duties of excise and inland duties;' Be it further enacted by the authority aforesaid, That, from and after the first day of *August*, One thousand seven hundred and eighty-three, no writ shall

(1) A constable acting without warrant is not within the provision; Postlethwaite *v.* Gibson, 3 Esp. Rep. 226.

(2) A writ sued out within time, but not served, cannot be connected with another, sued out after the time; Stanway *v.* Perry, 2 B. and P. 157. The writ must be sued out within six months from the time of giving notice, although the injury (false imprisonment) continued down to the time of suing out the second writ. The notice fixes the plaintiff to the trespass on which he means to proceed; Weston *v.* Fourmier, 14 East, 491. But a continued imprisonment is one entire trespass, and the action may be brought within six months after its termination; Pickersgill *v.* Palmer, B. N. P. 24.

No. IV. 23 Geo. III. c. 70.

be sued out against, nor a copy of any process served upon, any officer or officers of excise, or against any person or persons acting by his or their order, and in his or their aid, for any thing done (1) in the execution of, or by reason of (2) his or their office, until one calendar month next after notice in writing shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue out such writ or process as aforesaid; in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of (3) the person who is to bring such action, and the name and place of abode of the said attorney or agent, and that a fee of twenty shillings shall be paid for the preparing and serving of every such notice, and no more.

Officers not to be sued until after a month's notice.

Particulars to be contained in such notice.

Officers may tender amends.

XXXI. And be it further enacted, That it shall and may be lawful to and for any of the said officers, or other persons acting in their aid, to whom such notice shall be given as aforesaid, at any time within one calendar month after such notice shall have been given, to tender amends to the party complaining, or to his or her agent or attorney, and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of Not Guilty, and any other plea, with leave of the court: and if upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant or defendants; and in such case, or in case the plaintiff shall become nonsuited, or discontinue his or her action, or in case judgment shall be given for such defendant or defendants upon demurrer, then such defendant or defendants shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants in such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with his or her costs of suit.

If sufficient, a verdict to be given for the defendant, who shall be intitled to costs, &c.

XXXII. Provided always, and be it further enacted, That no plaintiff, in any case where an action shall be grounded on any act done by the defendant, shall be permitted to produce any evidence of the cause of such action, except such as shall be contained in the notice to be given as aforesaid, or shall recover any verdict against such officer, or persons acting in his aid, unless he shall prove on the trial of such action that such notice was given, and that in default of such proof the defendant in such action shall recover a verdict and costs as aforesaid.

Money into court.

XXXIII. And be it further enacted, That in case such officer, or others acting in his aid, shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall be brought, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments, shall be had, made, and given, in and by such court, as in other actions where the defendant is allowed to pay money into court.

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(1) In Greenaway *v.* Hunt, 4 T. R. 553, it was ruled that no action could be maintained to recover duties paid after an Act imposing them was repealed, and paid over by the defendant to his superior officer: but supposing such action maintainable, the court held that the defendant was entitled to notice, although it was urged that in Feltham *v.* Terry, B. N. P. 24, the preceding statute, 24 Geo. II., did not extend to actions of assumpsit. See Wallace *v.* Smith, 5 East. 113.

(2) Notice is not necessary in assumpsit, to recover money extorted for restoring goods seized by mistake. Grose, J.—"If an officer seize goods as forfeited, he does it *colore officii;* but if he takes money for delivering up the goods, there is no pretence to say that is done *colore officii;* Irving *v.* Wilson, 4 T. R. 485. See Daniel *v.* Wilson, 5 T. R. 1, mentioned in notes to the last number.

(3) Notice of action for breaking the plaintiff's dwelling-house at A. is not sufficient to describe the place of abode; Williams *v.* Burgess, 3 Taunt. 127. Notice of an action for seizing a ship of J. S. of Rotherhithe, and A. B. *late* of Rotherhithe, was held sufficient; Wood *v.* Folliott, 3 B. and P. 552. n.

No. IV. 23 Geo. II. c. 70.

XXXIV. And be it further enacted by the authority aforesaid, That if any action or suit shall be brought or commenced against any person or persons for any matter or thing done by any officer or officers of excise, or any others acting in his or their aid, in execution of, or by reason of his or their office, such action or suit shall be brought or commenced within three months next after the cause of action shall arise, and not afterwards; and shall be laid and tried in the county or place where the facts were committed, and not in any other county or place; and the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial to be had thereupon; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or suit, or if, upon a verdict or demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have such remedies for the same as any defendant or defendants can or may have in other cases where costs are given by law.

Limitation of actions.

General issue.

Treble costs.

[No. V.] 24 George III. sess. 2. c. 47.—An Act for the more effectual Prevention of Smuggling in this Kingdom.

'XXXV. AND whereas, by an Act made and passed in the twenty-third year of the reign of his present Majesty, (intituled, 'An Act for the more effectual preventing the illegal Importation of 'Foreign Spirits, and for putting a stop to the private Distillation of '*British*-made Spirituous Liquors; for explaining such part of the Act, 'imposing a duty upon male servants, as relates to the right of appeal 'from the justices of the peace; to amend and rectify a mistake in an 'Act of the last Session of Parliament, with respect to the removal of 'tea from one part of this kingdom to other parts thereof; and for 'preventing vexatious actions against officers of excise acting in pur-'suance of the authority given by excise statutes), divers regulations 'are made for the more effectual preventing vexatious suits against the 'officers of excise, and their assistants, acting under the authorities 'and powers to them given by the several statutes made for securing 'the duties of excise and inland duties; which regulations ought to be 'extended to officers of the customs, and their assistants, acting under 'the authorities and powers to them given by the several statutes made 'for securing the duties of the customs;' Be it enacted, That all and every clause, matter, and regulation, in the said Act contained, touching and concerning any action to be brought against any officer or officers of the excise, or against any person or persons acting by his or their order, and in his or their aid, for any thing done in the execution of, or by reason of his or their office, or any proceeding thereupon, shall be extended to all actions to be brought against any officer or officers of the customs, or against any person or persons acting by his or their order, and in his or their aid, for any thing done in the execution of, or by reason of their office, and to all proceedings in every such action, in as full and ample manner as if the officers of the customs had been named and included in the said Act.(1)

24 George III. sess. 2. c. 47. 23 Geo. 3. c. 70.

Extended to officers of the Customs, &c.

[No. VI.] 42 George III. c. 85.—An Act for the trying and punishing in *Great Britain* Persons holding public Employments, for Offences committed abroad;

(1) Notice of action against a custom-house officer for breaking the plaintiff's dwelling-house in C. Street, in the parish of G., is not a sufficient notice of the plaintiff's place of abode, within the statutes 23 Geo. III. c. 70. s. 30., and 24 Geo. III. sess. 2. c. 47. s. 35; Williams *v.* Burgess, 3 Taunt. 127.

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and for extending the Provisions of an Act, passed in the twenty-first Year of the Reign of King *James*, made for the Ease of Justices and others in pleading in Suits brought against them, to all persons, either in or out of this Kingdom, authorized to commit to safe Custody.—[22d *June* 1802.]

'WHEREAS persons holding and exercising public employments out of *Great Britain* often escape punishment for offences committed by them, for want of courts having a sufficient jurisdiction, in or by reason of their departing from the country or place where such offences have been committed, and that such persons cannot be tried in *Great Britain* for such offences as the law now stands, in as much as such offences cannot be laid to have been committed within the body of any county: And whereas it is therefore expedient that such and the like provisions as are contained in an Act passed in the eleventh and twelfth years of the reign of his late Majesty King *William* the Third, intituled, "An Act to punish governors of plantations of this kingdom for crimes by them committed in the plantations," and in an Act passed in the thirteenth year of the reign of his present Majesty, intituled, "An Act for establishing certain regulations for the better management of the affairs of the *East India* Company, as well in *India* as in *Europe*," and in an Act passed in the twenty-fourth year of the reign of his present Majesty, intituled, "An Act for the better regulation and management of the affairs of the *East India* Company, and of the *British* possessions in *India*, and for the establishing a court of judicature for the more speedy and effectual trial of persons accused of offences committed in the *East Indies*," should be extended and applied to the punishment of such offenders;' May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, if any person who now is, or heretofore has been, or shall hereafter be employed by or in the service of his Majesty, his heirs or successors, in any civil or military station, office, or capacity out of *Great Britain*, or shall heretofore have had, held, or exercised, or now has, holds, or exercises, or shall hereafter have, hold, or exercise any public station, office, capacity, or employment, out of *Great Britain*, shall have committed, or shall commit, or shall have heretofore been, or is, or shall hereafter be guilty of any crime, misdemeanor, or offence, in the execution, or under colour, or in the exercise of any such station, office, capacity, or employment as aforesaid, every such crime, offence, or misdemeanor may be prosecuted or inquired of, and heard and determined in his Majesty's Court of King's Bench here in *England*, either upon an information exhibited by his Majesty's Attorney-general, or upon an indictment found; in which information or indictment such crime, offence, or misdemeanor may be laid and charged to have been committed in the county of *Middlesex*; and all such persons so offending, and also all persons tried under any of the provisions of the said recited Act, passed in the reign of King *William* aforesaid, or this Act, or either of them, for any offence, crime, or misdemeanor, and not having been before tried for the same out of *Great Britain*, shall on conviction, be liable to such punishment as may, by any law or laws now in force, or any Act or Acts that may hereafter be passed, be inflicted for any such crime, misdemeanor, or offence committed in *England*, and shall also be liable, at the discretion of his Majesty's Court of King's Bench, to be adjudged to be incapable of serving his Majesty in any station, office, or capacity, civil or military, or of holding or exercising any public employment whatever.

11 & 12 Gul. 3. c. 12.

13 Geo. 3. c. 63.

24 Geo. 3. c. 25.

Offences committed by persons employed in any public service abroad may be prosecuted in the Court of King's Bench in England; and may be laid in Middlesex, and the offenders punished as if the offences had been committed in England, and also incapacitated.

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The Court of King's Bench, on motion, may award a writ of mandamus to any court of judicature, or the governor, &c. of the country where the offence was committed to obtain proofs of the matters charged; which shall be done by viva voce evidence, and the examinations shall be transmitted to the Court of King's Bench and admitted on the trial, &c.

II. And be it further enacted, That in all cases of indictments found or informations exhibited under and by virtue of this Act, it shall be lawful for his Majesty's said Court of King's Bench, upon motion to be made, and such notice thereof as to the said Court of King's Bench may appear to be sufficient, by or on behalf of his Majesty's Attorney-general or other prosecutor, or of the defendant or defendants, to award at the discretion of the said court, a writ or writs of *mandamus* to any chief justice and judges, or any chief justice or other judge singly for the time being, of any court or courts of judicature in the country or island, or near to the place where the crime, offence, or misdemeanor shall be charged in such indictment or information to have been committed, or to any governor or lieutenant governor or other person having any chief authority in such country, island, or place, or to any other person or persons residing there, as the case may require, and as to the said court of King's Bench may, under all the circumstances of the case, seem most expedient for the purpose of obtaining and receiving proofs concerning the matters charged in any such indictment or information; and the person or persons to whom such writ or writs shall be directed and sent, are hereby respectively authorized and required to hold a court, session, or meeting, with all convenient speed, for the examination of witnesses and receiving other proofs concerning the matters charged in such indictment or information respectively, and in the mean time to cause public notice to be given of the holding the said court, session, or meeting, and to issue such summons or other process as may be requisite for the attendance of witnesses, and to adjourn from time to time as occasion may require; and such examination or examinations shall be then and there openly and publicly taken *viva voce* in the said court, session, or meeting, upon questions put by any such prosecutor or prosecutors, defendant or defendants, or any agent or agents, person or persons on behalf of the said Attorney-general or other prosecutor or prosecutors, and defendant or defendants respectively, if any such shall attend for that purpose, and by the court, person or persons to whom such writ shall be directed and sent as aforesaid, upon the respective oaths of witnesses, and the oaths of skilful interpreters if necessary, administered according to the forms of their several religions, and shall, by some officer or person sworn for that purpose, be reduced into writing on parchment or paper; and in case any duplicate or duplicates shall be required by or on behalf of the prosecutor, or the defendant or defendants respectively, into two or more writings on parchment or paper, as the case may require; and such examination or examinations shall be sent to his Majesty in his Court of King's Bench closed up, and under the seal or seals of the person or persons before whom such examination or examinations as aforesaid shall have been taken; and the person or persons taking such examination or examinations as aforesaid, shall deliver the same to any person or persons appointed by the said Court of King's Bench to receive the same, or shall transmit the same in such manner as the said Court of King's Bench shall direct; and all such examinations shall, with all convenient speed, be delivered to one of the clerks in court of his Majesty's Court of King's Bench, in the crown office of the said court, for the safe custody thereof; and every clerk in the said Court of King's Bench, to whom any examination or examinations shall be delivered, is hereby authorized to administer an oath to the person delivering the same to him, in such form as the said Court of King's Bench shall direct; and such examination or examinations shall be allowed and read upon the trial of any such indictment or information, or any other subsequent proceeding thereon or relating thereto, and shall be deemed as good and competent evidence as if the witness or witnesses, whose examination or examinations shall be so read, had been present, and sworn, and examined *viva voce*, at such trial, any law or usage to the contrary notwithstanding, saving all just exceptions to be taken to any such examination or examinations, or any part thereof when the same shall be offered to be read

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as aforesaid; and all persons concerned shall be entitled to take copies of such examinations in the custody of such clerk in court at their own costs and charges.

Court of King's Bench may order an examination on interrogatories de bene esse, where viva voce evidence cannot be had.

III. And be it further enacted, That it shall also be lawful for the said Court of King's Bench, upon motion to be made, and such notice thereof as aforesaid, by or on behalf of his Majesty's Attorney General, or other prosecutor, or defendant or defendants in any such indictment or information, to order an examination *de bene esse* of witnesses upon interrogatories in any case where the *viva voce* testimony of such witnesses cannot conveniently be had, to be taken before an examiner to be appointed by the said court, and the depositions taken upon such interrogatories shall be afterwards admitted to be read in evidence upon the trial of such indictment or information, or in any other subsequent proceeding thereon or relating thereto, and shall be deemed good and sufficient evidence in the law, saving all just exceptions to be taken to such depositions when the same shall be offered to be read as aforesaid. (1)

Persons to whom such writs of mandamus shall be be directed, empowered to do all things necessary for the due execution thereof by compelling the appearance and testimony of witnesses, &c.

IV. And be it further enacted, That it shall be lawful for any person or persons to whom any such writ or writs of *mandamus* shall be directed, or order sent as aforesaid; and in case the same shall be directed or sent to more than one person, for so many of them as shall for that purpose be appointed by the said writ, or required by the said order, and who shall act in the execution thereof, and such person and persons is and are hereby respectively authorized and required, to administer all oaths required to be taken under any of the provisions of this Act, or necessary for the due execution of any such writ or order, or any Act, matter, or thing relating thereto, and to examine upon oath all persons whom he or they find occasion to summon, and all other persons whom he or they shall think fit to examine, touching all matters and things necessary for the due execution of any such writ or order as aforesaid; and such person and persons respectively, to whom such writ shall be directed, or order sent as aforesaid, or so many of them as shall in that behalf be appointed, and shall act in the execution thereof as aforesaid, shall have full power and authority to compel the appearance and giving evidence of any witness upon any such writ or order, and to issue special summons or other process for that purpose, and may proceed upon such summons, or other process, by imprisonment of the body of any person refusing to appear or give evidence, in like manner as any court or courts of record within this kingdom, having competent authority for that purpose, may proceed against any person or persons for any contempt committed against the authority of any such court.

Persons giving false evidence (either under 24 Geo. 3. c. 25. or this Act) subject to penalties of perjury.

V. And be it further enacted, That in case any person or persons in the course of his, her, or their examination upon oath, under and by virtue of the said recited Act of the twenty-fourth year of his present Majesty, or this Act, shall wilfully and corruptly give false evidence, such person or persons so offending, and being thereof duly convicted, shall be, and is and are hereby declared to be, subject and liable to such pains and penalties, as persons guilty of wilful and corrupt perjury shall be liable to by any law or laws then in force in the kingdom, island, or place where such false evidence shall have been given as aforesaid.

21 Jac. 1. c. 12.

'VI. And whereas it is expedient to extend the provisions of an Act, 'passed in the twenty-first year of the reign of his Majesty King *James* 'the first, intituled, "An Act to enlarge and make perpetual the Act 'made for ease in pleading against troublesome and contentious suits, 'prosecuted against justices of the peace, mayors, constables, and cer-'tain other his Majesty's officers, for the lawful execution of their of-'fice, made in the seventh year of his Majesty's most happy reign," to 'all persons who may by law commit to safe custody, either in or out 'of this kingdom;' Be it therefore enacted, That, from and after the

(1) The defendant is only entitled to such *mandamus*, upon laying sufficient grounds before the Court by affidavit; but the prosecutor is entitled of course; Rex *v.* Jones, 8 East, 31.

No. VI. 42 Geo. III. c. 85.

passing of this Act, the said recited Act, and all the provisions therein contained shall extend, and be deemed, taken, and construed to extend to all persons having, holding, or exercising, or being employed in, or who may hereafter have, hold, or exercise, or be employed in any public employment, or any office, station, or capacity, either civil or military, either in or out of this kingdom; and who under and by virtue, or in pursuance of any Act or Acts of Parliament, law or laws, or lawful authority within this kingdom, or any act or acts, statute or statutes, ordinance or ordinances, or law or laws, or lawful authority in any plantation, island, colony, or foreign possession of his Majesty, now have or may hereafter have, by virtue of any such public employment, or such office, station, or capacity, power or authority to commit persons to safe custody; and all such persons, having such power or authority as aforesaid, shall have and be entitled to all the privileges, benefits and advantages, given by the provisions of the said Act as fully and effectually, to all intents and purposes, as if they had been specially named therein: Provided always, That where any action, bill, plaint, or suit upon the case, trespass, battery, or false imprisonment, shall be brought against any such person as is in this Act described as aforesaid, in this kingdom for or upon any act, matter, or thing done out of this kingdom, it shall be lawful for the plaintiff bringing the same to lay such act, matter, or thing, to have been done in *Westminster*, or in any county where the person against whom any such action, bill, plaint, or suit, shall be brought, shall then reside; any thing in this Act to the contrary thereof notwithstanding.

The protection of recited Act extended to persons having public employment, in or out of the kingdom, being by law empowered to commit persons to safe custody.

Actions brought against them for things done out of this kingdom, may be laid in Westminster, &c.

[No. VII.] 43 George III. c. 141.—An Act to render Justices of the Peace more safe in the Execution of their Duty.—[11th *August*, 1803.]

43 George III. c. 141.

'WHEREAS it is expedient that justices of the peace in *Great Britain* and *Ireland* respectively, who by virtue of divers Acts of Parliament in force in the united kingdom, are authorized and required to convict persons of sundry offences in a summary way, should be rendered more safe in the execution of such their duty:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all actions whatsoever which shall, at any time, after the passing of this Act, be brought against any justice or justices of the peace in the united kingdom of *Great Britain* and *Ireland*, for or on account of any conviction by him or them had or made, under or by virtue of any Act or Acts of Parliament in force in the said united kingdom, or for or by reason of any act, matter, or thing whatsoever, done or commanded to be done by such justice or justices, for the levying of any penalty, apprehending any party, or for or about the carrying of any such conviction into effect, in case such conviction shall have been quashed, (1) the plaintiff or plaintiffs in such action or actions, besides the value and amount of the penalty or penalties which may have been levied upon the said plaintiff or plaintiffs, in case any levy thereof shall have been made, shall not be entitled to recover any more or greater damages than the sum of two pence, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration in the action wherein the recovery shall be had, and which shall be in an action upon the case only, that such acts were done maliciously and without any reasonable and probable cause. (2)

In actions against justices for any conviction, &c. the plaintiff (besides any penalty levied) shall recover only 2*d.* damages, unless malice and want of probable cause be expressly alleged.

(1) See Massey *v.* Johnson, 12 East, 67; Gray *v.* Cookson, 16 East, 13.

(2) See Burley *v.* Bethune, 1 Marshall, 220, the plaintiff must prove want of probable cause

No. VII. 43 Geo. III. c. 141.

II. And be it further enacted, That such plaintiff shall not be entitled to recover against such justice any penalty which shall have been levied, nor any damages or costs whatsoever, in case such justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

Nor shall the Penalty, &c. be recovered if plaintiff be proved guilty of the offence, &c.

in an action for malicious prosecution; shewing that he was innocent of the offence of which he is convicted is not sufficient.—But the statute does in no instance extend to protect justices of peace in the execution of their office against actions for acts of trespass or imprisonment, unless done on account of some conviction made by them of the plaintiffs in such actions, by virtue of any statute, &c. Massey *v.* Johnson, 12 East, 67.—It extends, however, to protect magistrates against actions of trespass only in the case of a conviction quashed; giving to the party grieved a remedy by action on the case, Gray *v.* Cookson, 16 East, 13.

PART IV.

CLASS XXI.

Penal Actions and Informations.

THE following note upon the general subject of penal actions was subjoined by the Editor to the case of Kirkham *v.* Wheeley, 1 Salk. 30, 6th Edition.

An action *q. t.* is the suit of the informer, not of the King; Lut. 196. A plaintiff *qui tam* may be nonsuited; 3 Lev. 398; Sav. 56. Upon such nonsuit the defendant is entitled to costs against him; Wilkinson, q. t. *v.* Allot, Cowp. 366. The Court will not in a penal action stay proceedings until costs of a *non pros.* at the suit of another plaintiff, are paid; English, q. t. *v.* Cox, Cowp. 322: nor upon affidavit, that a former action was brought for the same offence, which the defendant had leave to compound; the fact must be specially pleaded; Harrington q. t. *v.* Johnson, Cowp. 744. Proceedings will be stayed on motion until the plaintiff gives notice of his place of abode, and, if he is out of the realm, security for costs; Val. *v.* Green, Str. 697. Actions on penal statutes are expressly excepted in stat. 4 Anne, c. 16, which allows double pleading; and it has been accordingly adjudged, that in them the defendant cannot plead double; Heyrick *v.* Foster, 4 T. R. 701. A plea of another action commenced the same term must set forth that it was commenced prior; Combe *v.* Pitt, 3 Burr. 1423; 1 Bl. 437. Informations on penal statutes are excepted in the statutes of amendment; but there is no difference between civil and penal actions with respect to amendments at common law; Baldwin *v.* ———, Bunb. 49; Brooke *v.* Day, Bunb. 336; Edgell *v.* Decker, Bunb. 252; Wynne *v.* Middleton, Str. 1227; 1 Wils. 256; Bonfield, q. t. *v.* Milner, 2 Burr. 1098; Mace *v.* Lovett, 5 Burr. 2833; Richards *v.* Brown, Doug. 113. The Court will not set aside a judgment of *non pros.* regularly obtained against a *mere* common informer suing for punishment; but it might be otherwise, if the party really injured sued for justice and reparation; 1 Burr. 401. Where a *q. t.* Action has been depending four years, an amendment will not be permitted though all is in paper; Goff *v.* Popplewell, 2 T. R. 707. In a popular action on two counts for two 5*l.* penalties, the defendant had leave to pay 5*l.* into Court generally; Stock *v.* Eagle, 2 Bl. Rep. 1052. If there appears reason to suspect that the action is brought merely for the sake of the issue-money, that will be ordered to be paid into Court to abide the event of the suit; Parker, q. t. *v.* Macfarlan, 3 T. R. 137. The defendant may have *nisi prius* by proviso; 2 Leon. 110. A Quaker's evidence is admissible in a penal action; Atchison *v.* Everett, Cowp. 382. If the *q. t.* informer die after a verdict, his executor or administrator shall have judgment for his moiety; Hard. 161: If he dies after judgment, and his death is suggested on the roll; Com. Dig. action upon stat. E. 2. New trial may be granted for the mistake or misdirection of the judge, but not for the wrong conclusion of the jury after verdict for the defendant; Wilson *v.* Rastall, 4 T. R. 753. If the action is for several penalties, and the jury give a verdict *generally* for one, which the plaintiff applies to a *particular* count, and that cannot be supported, he cannot afterwards apply it to another, which is good and sufficiently supported by evidence; Holloway, q. t. *v.* Bennett, 3 T. R. 448. The defendant in a *q. t.* action cannot be discharged upon surrendering his effects under the Lords' Act; Harl, q. t. *v.* Hawkins, 3 Burr. 1322; 1 Bl. 372. The defendant cannot be taken in execution on a Sunday; Rex *v.* Myers, 1 T. R. 265.

[No. I.] 4 Henry VII. c. 20.—Actions popular, prosecuted by Collusion, shall be no Bar to those which be pursued with good Faith.

4 Henry VII. c. 20.

The enormities of collusion practised in suing of actions popular.

'ITEM, That where actions popular in divers cases have been ordained by many good Acts and Statutes afore this time made, for the reformation of extortions, maintenances, oppressions, injuries, extortions, and wrongs used and committed within this realm, which actions been very penal to all misdoers and offenders in such actions condemned, and much profitable as well to the King, as to every of his subjects that them will sue and maintain, if the same actions so sued and commenced might be truly pursued without covin or collusion. But now it is so commonly used within this realm, that if any such offenders offending in cases where any of the said actions lie, then the

No. I. 4 Hen. VII. c. 20.

'said misdoers or offenders, in eschewing to leese the said penalties, will 'cause an action popular to be commenced against them by covin of 'the plaintiff upon that case wherein they have so offended; or else if 'any such action popular be commenced against any such said offender 'by good faith, then the same offender will delay the said action, either 'by non-appearance or by traverse, and, hanging the same action, the 'same offender will cause like action popular to be brought against 'him by covin, for the same cause and offence that the first action was 'sued, and then by covin of the plaintiff in that second action he will 'be condemned, either by confession, feigned trial, or release: which 'condemnation or release, so had by collusion and covin pleaded by the 'said offender, shall bar the plaintiff in the action sued in good faith; 'and by these subtil means of collusion and covin the said good Acts 'and statutes seldom been executed against such offenders which causeth 'them to be bolder to offend the King, as well in breaking of the said 'statutes, laws, and peace, as in robbing, murdering, exactions taking, 'quarrels maintaining, and the King's poor subjects by extortion, and 'many other unlawful means oppressing:' Therefore the King our Sovereign Lord, in reforming of the premises, by the advice and assent of the Lords Spiritual and Temporal, and at the request of the said Commons, in this said present Parliament assembled, and by authority of the same hath ordained, established, and enacted, That if any person or persons hereafter sue with good faith any action popular, and the defendant or defendants in the same action plead any manner of recovery of action popular in bar of the said action, or else that the same defendant or defendants plead, that he or they before that time barred any such plaintiff or plaintiffs in any such action popular, that then the plaintiff or plaintiffs in the action taken with good faith may aver, that the said recovery in the said action popular was had by covin, or else to aver that the said plaintiff or plaintiffs was or were barred in the said action popular by covin, that then, if afterward the said collusion or covin so averred be lawfully found, the plaintiff or plaintiffs in that action sued with good faith, shall have recovery according to the nature of the action, and execution upon the same in like wise and effect, as though no such action afore had been had. And moreover, that it is enacted and ordained by the authority aforesaid, That in every such action popular, wherein the defendant or defendants shall be lawfully condemned or attainted of covin or collusion, as is aforesaid, that every of the same defendants have imprisonment of two years by process of *capias* and outlagary, to be sued within the year after such judgment had, or at any time after, till the said defendant or defendants shall be had and imprisoned, as is aforesaid, and that as well at the King's suit as of every other that will sue in that behalf: And that no release of any common person hereafter to be made to any such party, whether before or after any action popular, or indictment of the same had or commenced, or made hanging the same action, be in any wise available or effectual to let or surcease the said action, indictment, process or execution. Provided alway, That no plaintiff or plaintiffs be in any wise received to aver any covin in any action popular, where the point of the same action, or else the covin or collusion have been once tried, or lawfully found with the plaintiff or plaintiffs, or against them, by trial of twelve men, and not otherwise.

Recovery in an action popular by covin, or a bar in the same, is no plea in an action sued with good faith.

The punishment of the defendant attainted of collusion.

No release of a common person can discharge a popular action.

No collusion averrable where the point of the action hath been tried by verdict.

[No. II.] 18 Elizabeth, c. 5.—An Act to redress Disorders in common Informers.

18 Elizabeth, c. 5.

FOR redressing of divers disorders in common informers, and for better execution of penal laws, Be it enacted, That every informer upon any penal statute shall exhibit his suit in proper person, and pursue the same only by himself or by his attorney (1) in court; and that

(1) The action therefore cannot be brought by an infant, who can only sue by guardian or next friend; Maggs *v.* Ellis, B. N. P. 196.

No. II. 18 Elizabeth, c. 5.

none shall be admitted or received to pursue against any person or persons upon any penal statute, but by way of information or original action and not otherwise; nor shall have ne use any deputy or deputies at all; and that upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof into any office or to any officer which lawfully may receive the same, without any manner of antedate thereof to be made, and that the same information be accounted and taken to be of record from that time forward and not before. And be it likewise enacted for the consideration aforesaid, That no process be sued out upon any such information, until the information be exhibited in form aforesaid; and that upon every such process shall be indorsed, as well the party's name that pursueth the same process, as also the statute upon which the information in that behalf made is grounded: And that every clerk making out process contrary to the tenor and provision of this Act, shall forfeit and lose forty shillings for every such offence; the one half to be to the Queen's Majesty, her heirs and successors, and the other half to the party against whom any such defective process shall be awarded, to be recovered in any court of record, by action of debt or information, in which no essoin, protection, injunction, or wager of law shall be permitted or allowed.

The duty of an informer in prosecuting a suit upon a penal statute, and his punishment if he abuse it.

A note of the day, month and year of the exhibiting of an information.

Indorsement of the process awarded upon an information.

II. And be it further enacted, That no jury shall be compelled to appear in any of the Queen's Majesty's courts of *Westminster*, for the trial of any issue in any such suit upon any penal law, for any such offence committed above thirty miles from the city of *Westminster*, except in case where the Attorney-general for the time being, for some reasonable cause in that behalf to be shewed, shall require the same to be tried at the bar, in any of the courts of the Queen's Majesty, her heirs or successors, at *Westminster* aforesaid; which request shall be noted on the backside of the writ of *distringas* thereupon awarded, to the end the sheriff or his bailiff may and shall signify the same to the jury that are in such case impanelled.

Where the trial of an issue shall be in a suit upon a penal statute.

III. And be it further enacted, That no such informer or plaintiff shall or may compound or agree with any person or persons that shall offend, or shall be surmised to offend, (1) against any penal statute, (2) for such offence committed, or pretended to be committed, but after answer made in court (3) unto the information or suit in that behalf exhibited or prosecuted; nor after answer, but by the order or consent of the court (4) in which the same information or suit shall be depend-

No informer shall compound with the defendant but by consent of the court.

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(1) The party paying money to compound may recover it back; Williams *v.* Hedley, 8 East 378. As to suing in an inferior court, or by bill in B. R. see authorities cited Com. Dig. Notes upon Statute E. 1. See also 2 Hawk. 380. Leigh *v.* Kent, 3 T. R. 362. n.

(2) The enactment extends to offences created by subsequent statutes; *semble* Pie's case, Hutton 35.

(3) This section does not apply to offences cognizable only before magistrates: and an indictment for compounding such an offence was holden bad in arrest of judgment; Rex *v.* Crisp, 1 B. & A. 282.

(4) The court of C. B. will not give leave to compound, either before or after verdict, where part of the penalty goes to the King, unless the consent of the crown is previously signified; Howard *v.* Sowerby, 1 Taunt. 103; and a king's serjeant must be instructed to consent, though there is an affidavit that the moiety of the Crown has been paid; Sheldon *v.* Mumford, 5 Taunt. 268. In Button *v.* Pierce, Barnes 462, it is said by the court, that after conviction leave is never given to compound: but that was a case not within the statute, and therefore the opinion merely a dictum. In Bradshaw *v.* Mottram, 1 Str. 167, leave was given after verdict on affidavit of the poverty of the defendant who was in execution. In Maughan *v.* Walker, 5 T. R. 98., after verdict in usury under favourable circumstances. But it lies with the defendant to shew the circumstances entitling him to such an indulgence; Crowder *v.* Wagstaff, 1 B. & P. 18.

In an action on the posthorse duties, the plaintiff was allowed to receive the deficient duties (being less than 40*s.*) and costs, although amounting to more than the 40*s.* paid to the Crown; North *v.* Smart, 1 B. & P. 51. In an action on a statute giving no costs, the plaintiff having agreed to stay proceedings, on payment of a sum in equal moieties to the crown and the plaintiff, and the entire costs to the plaintiff; the Crown obtained a moiety of the costs also; Lee *v.* Cass, 2 Taunt. 213. On leave to compound, the King's half is paid to the Master of the Crown Office; Brown *v.* Bailey, 4 Bur. 1929. The leave to compound is in the discretion of the court, and was re-

No. II. 18 Elizabeth, c. 5.

ing; upon the pains and penalties hereafter in this present Act set down and declared: And that if any such informer or plaintiff as aforesaid, shall willingly delay his suit, or shall discontinue or be nonsuit in the same, or shall have the trial or matter past against him therein by verdict or judgment of law; That then in every such case the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the court in which the same suit shall be attempted: For the recovery and execution whereof every such defendant shall immediately upon the same costs, charges and damages assigned, have his *capias ad satisfac. fieri facias*, or *elegit*, to be awarded unto him out of the same court in which the same shall be so assigned as is aforesaid, as in other cases of execution.

The penalty of an informer delaying or discontinuing his suit, or being nonsuit, &c.

IV. And be it also enacted, That if any person or persons (except the clerks of the court only, for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition, or other misdemeanour, contrary to the true intent and meaning of this statute, or shall by colour or pretence of process, or without process, upon colour or pretence of any matter of offence against any penal law (1) make any composition, or take any money, reward or promise of reward for himself, or to the use of any other, without order or consent of some of her Majesty's courts at *Westminster*; that then he or they so offending, being thereof lawfully convicted, shall stand on the pillory (2) in some market-town next adjoining where the same offence shall be committed, in the open market-time, and there remain by the space of two hours; and shall from and after such conviction for ever be disabled to pursue, or be plaintiff or informer in, any suit or information upon any statute popular or penal; and shall also for every such offence forfeit and lose ten pounds of lawful *English* money, the one half thereof to the Queen's Majesty, her heirs and successors, and the other half to the party grieved thereby, to be recovered in any court of record, by action of debt or information; in which no essoin, protection, injunction or wager of law shall be permitted or allowed; And that justices of *oyer* and *terminer*, justices of assize in their circuits, and justices of peace in their quarter-sessions, shall have full power and authority to hear and determine all offences to be committed or done contrary to the true intent and meaning of this present Act.

The punishment of an informer misbehaving himself in the prosecution of his suit, &c.

What justices may hear and determine these offences.

V. Provided always, and nevertheless be it enacted, That it shall and may be lawful to and for any person or persons grieved by means of any manner of maintenance, champerty, buying of titles or imbracery, to pursue upon any the statutes provided and set forth against maintenance, champerty, buying of titles, or imbracery, as he or they might have done before the making of this Act; any thing in this Act contained to the contrary in any wise notwithstanding.

Pursuing upon the statute against maintenance, champerty, &c.

VI. Provided also, That this Act shall not extend to any suit already depending, nor shall restrain any certain person, body politic or corporate, to whom or to whose use any forfeiture, penalty or suit is or shall be specially limited or granted by virtue of any statute, and not generally to any person that will sue, but that every such certain person, body politic or corporate, which might sue or inform, as if this Act were not made, may in such case sue, inform and pursue, as he or they might have done if this Act were never had nor made.

Penalties given to persons certain, and not generally.

VII. And provided also, That neither this Act, nor any thing therein contained, shall in any wise extend to any such officers of record, as have in respect of their offices heretofore lawfully used to exhibit in-

Officers using to exhibit information.

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fused in Howell *v.* Morris, in an action for selling gold of less fineness than required by stat. 18 Eliz. c. 15; Howell *v.* Morris, 1 Wils. 79; in an action on stat. 20 Geo. 2. c. 36, for keeping a disorderly house, M. 38 Geo. 3. (Tidd's Practice.) For the course of proceeding on applications for leave to compound, see Tidd, c. 22.

(1) See Rex *v.* Southerton, 6 East, 126.

(2) By stat. 56 Geo. III. c. 138, the punishment of the pillory is abolished in all cases except perjury, and fine and imprisonment substituted. See the stat. post., Part V.

formations or sue upon penal laws, nor to any officers informing or pursuing for matters only concerning his or their offices, but that they and every of them may inform and pursue in that behalf, as they might have done before the making of this Act; any thing in this Act contained to the contrary in any wise notwithstanding.

No. II. 18 Elizabeth, c. 5.

VIII. This Act to take force and effect from the feast of *Easter* next coming, and from thenceforth to endure unto the end of the first session of the next Parliament. [Made perpetual by 27 Eliz. c. 10. 31 Eliz. c. 5.]

[No. III.] 31 Elizabeth, c. 5.—An Act concerning Informers.

31 Elizabeth, c. 5. None restrained by order of any of the Queen's courts may be an informer.

'FOR that divers of the Queen's Majesty's subjects be daily unjustly vexed and disquieted by divers common informers upon penal statutes, notwithstanding any former statute that hath been heretofore made against their disorders;' For remedy whereof, Be it enacted by the authority of this present Parliament, That all former statutes made for reformation of disorders of such common informers, not repealed or altered by this Act, shall be put in due execution: And that no person, other than the party grieved, after twenty days after the end of this session of parliament, shall be received to inform or sue upon any penal statute, that before that time hath been for any misdemeanor, by any order of any of the Queen's Majesty's courts, ordered not to follow or pursue any suit upon any penal statute.

18 Eliz. c. 5. In information upon penal statutes the county where the offence was done must be expressed, &c. Many be disquieted by common informers. Informers restrained to sue by order of some court.

II. And be it further enacted by the authority aforesaid, That in any declaration or information at any time after twenty days after the end of this session of Parliament to be had, brought, sued or exhibited, the offence against any penal statute shall not be laid to be done in any other (1) county, but where the contract, or other matter alleged to be the offence, was in truth done: And that every defendant in such action or information shall and lawfully may traverse and allege, that the offence supposed by the same suits to be committed, was not committed in the county where such offence is alleged; which being tried for the defendant, or if the plaintiff be thereupon nonsuit in his information or suit, that then the plaintiff shall be barred in that action or information; any law or use to the contrary notwithstanding.

The county shall be expressed where the offence was done.

Officers of record shall not be bound by this Act.

III. Provided always, That this Act, nor any thing herein contained, shall in any wise extend to any such officers of record, as have in respect of their offices heretofore lawfully used to exhibit informations, or sue upon penal laws; but that they and every of them may inform and pursue in that behalf, as they might have done before the making of this Act; any thing in this Act to the contrary in any wise notwithstanding.

Certain offences whereof information may be given in any county. 1 El. c. 11. 1 El. c. 20. 37 H. 8. c. 9. 13 El. c. 8.

IV. And provided also, That this Act, nor any thing herein contained, shall extend to the laying or alleging of any offence in any declaration or information, for or concerning any champerty, buying of titles or extortion, or any offence committed or to be committed against the statute made in the first year of the Queen's Majesty's reign, intituled, 'An Act limiting the times for laying on land merchandize from beyond the seas, and touching customs of sweet wines;' And one other Act made in the said first year of her Majesty's reign, intituled, 'An Act

(1) There has been much difference of opinion as to this provision being in force; and in Wynn *v.* Bellman, Mic. 55 Geo. III. 1 Marshall, 320, (in which the venue was charged upon the common affidavit) it seems to have been supposed that the action might be laid in any county; but in the following term it was held, upon a full discussion and examination of this statute and 21 James c. 4, post. that the provision is in force unrepealed by the later statute, and extends to cases in which penal actions are given by subsequent statutes; and see Robinson *v.* Garthwaite, 9 East, 296.

No. III. 31 Elizabeth, c. 5.

5 & 6 Ed. 6. c. 14. 21 Jac. 1. c. 4. s. 2.

'of a subsidy of tonnage and poundage,' or any thing in any of them contained; or for the concealing, or defrauding the Queen's Majesty, her heirs and successors, of any customs, tonnage, poundage, subsidy, impost or prizage; or for any matter of corrupt usury; or for any offence comprised in any statute made or to be made against engrossing, regrating or forestalling, where the penalty or forfeiture shall appear to be to the value of twenty pounds or above; but that every such offence shall or may be laid in any county at the pleasure of any such informer; any thing in this Act to the contrary notwithstanding.

Within what times suits upon penal statutes shall be pursued.

V. And be it further enacted by the authority aforesaid, That all actions, suits, bills, indictments or informations, which after twenty days next after the end of this session of Parliament shall be had, brought, sued or exhibited, for any forfeiture upon any statute penal made or to be made, whereby the forfeiture is or shall be limited to the Queen, her heirs or successors only, shall be had, brought, sued or exhibited within two years next after the offence committed or to be committed against such Act penal, and not after two years; and that all actions, suits, bills or informations which after the said twenty days shall be had, brought, sued or commenced for any forfeiture upon any penal statute made or to be made, except the statute of tillage, the benefit and suit whereof is or shall be by the said statute limited to the Queen, her heirs or successors, and to any other which shall prosecute in that behalf, (1) shall be had, brought, sued or commenced by any person that may lawfully pursue for the same as aforesaid, within one year next after the offence (2) committed, or to be committed against the said statute; and in default of such pursuit, that then the same shall be had, sued, exhibited, or brought for the Queen's Majesty, her heirs or successors, at any time within two years after that year ended. And if any action, bill, suit, indictment or information for any offence against any penal statute made or to be made, except the statute of tillage, shall be brought after the time in that behalf before limited, That then the same shall be void and of none effect; any act or statute made to the contrary notwithstanding.

Actions, informations, &c. limited by some statutes to be sued within a shorter time.

VI. Provided always, That where any action, information, indictment or other suit, is or shall be limited by any statute penal, to be had, sued, commenced or brought within shorter time than is afore rehearsed; That in every such case, the action, information, indictment or other suit shall be brought within the time limited by such estatute.

A repeal of the statute of 7 H. 8. c. 3. touching informations.

VII. And be it further enacted by the authority aforesaid, That one statute made in the seventh year of the reign of the late King of famous memory, King *Henry* the Eighth, concerning the time of bringing actions or informations upon penal laws, shall from and after twenty days after the end of this session of Parliament be utterly repealed; and that all suits from and after the said twenty days to be pursued upon any statute, for using any unlawful game, or for not using of any lawful game, or for not having bows and arrows according to the law,

(1) The Act extends to an action given in the first instance to the party grieved, and on his default to a common informer for himself and the poor of the parish; Lookup *v.* Frederick, Bull. N. P. 195. Where the whole penalty is given to the informer, the case is not within the Act; Cuthford *v.* Blandford, Carth. 232; 1 Lord. Raym. 78; Chance *v.* Adams, 1 Lord Raym. 77.

(2) The action must be shewn to be commenced in proper time. The memorandum on the record is *prima facie* evidence of the time of commencing the action, as well in the Common Pleas as the King's Bench; Webb *v.* Pratchitt, 1 B. & P. 263. It will in general be sufficient to shew, that a writ which will warrant the declaration was sued out in proper time, without shewing it to have been either served or returned; Parsons *v.* King, 7 T. R. 6. Where two or more writs have issued, it must appear that the writ on which the plaintiff has declared, was a continuation of the first, which can only be done by shewing that the first writ was returned; Harris *v.* Woolford, 6 T. R. 617. Lord Kenyon allowed the plaintiff to produce the writ (the action not appearing, by the memorandum on the record, to be commenced in time) after the objection had been taken; Maugham *v.* Walker, Peake N. P. C. 163.

No. III. 31 Elizabeth, c. 5.

or for using any art or mystery in the which the party hath not been brought up according to the statute in that behalf made, shall be sued and prosecuted in the general quarter sessions of the peace, or assizes, of the same county where the offence shall be committed, or otherwise enquired of, heard and determined in the assizes, or general quarter-sessions of the peace of the same county where such offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the same county where such offence shall happen or be committed. 18 El. c. 5, 27 El. c. 10. 21 Jac. I. c. 4.

5 El. c. 4. Certain offences punishable only at the assizes, quarter sessions, or in a leet.

[No. IV.] 21 James I. c. 4.—An Act for the Ease of the Subject, concerning Informations upon Penal Statutes.(1)

21 James I. c. 4. 38 El. c. 5. Informations upon penal statutes shall be prosecuted in the counties where the offences were committed.

'WHEREAS the offences against divers and sundry penal laws and 'statutes of this realm may better, and with more ease and less 'charge to the subject be commenced, sued, informed against, prose-'cuted and tried, in the counties where such offences shall be commit-'ted: And whereas the poor commons of this realm are grievously 'charged, troubled, vexed, molested and disturbed by divers trouble-'some persons, commonly called relators, informers, and promoters, by 'prosecuting and inforcing them to appear in his Majesty's courts at '*Westminster*, and to answer offences supposed by them to be commit-'ted against the said penal laws and statutes, or else to compound with 'them for the same:' For remedy whereof be it enacted by the authority of this present Parliament, That all offences hereafter to be committed against any penal statute, for which any common informer or promoter may (2) lawfully ground any popular action, bill, plaint, suit or information, before (3) justices of assise, justices of *nisi prius* or gaol-delivery, justices of *oyer* and *terminer*, or justices of peace in their general or quarter sessions, shall, after the end of this present session of Parliament, be commenced, sued, prosecuted, tried, recovered, and determined by way of action, plaint, bill, information, or indictment, before the justices of assize, justices of *nisi prius*, justices of *oyer* and *terminer*, and justices of gaol-delivery, or before the justices of peace of every county, city, borough, or town corporate, and liberty, having power to enquire of, hear and determine the same, within this realm of *England*, or dominion of *Wales*, wherein such offences shall be committed, in any of the courts, places of judicature, or liberties aforesaid

(1) For the general effect of this Act, as connected with that of 31 Eliz. (the preceding number) see Barber *v.* Tilson, 3 M. & S. 429.

(2) The statute does not extend to cases arising upon subsequent statutes; Hick's case, 1 Salk. 372; but if the offence was created by a temporary statute, expired before the 21 J. 1., and continued by subsequent statutes, the subsequent Acts which have continued it from time to time, all give effect to it as an Act of the time when it was first passed; Shipman *v.* Henbest, 4 T. R. 109. The defendant in penal action on a statute passed since 21 Jac. I. c. 4., may change the venue to the county where the offence is committed. *Quære*, Whether penal actions on statutes passed since the 21 Jac. I. c. 4, must lay the venue in the county where the offence is committed? Admitted *arguendo* that it is not necessary, Wynne *v.* Belman, 5 Taunt. 754.

(3) This Act does not extend to *all* proceedings on penal statutes. It only prohibits the proceedings in the courts of Westminster, in cases where actions, bills, plaints, suits, or informations might have been brought in inferior courts, (which power is expressly given by stat. 5 Eliz. c. 4.) and does not apply to 1 James I., respecting the searching of leather, which only enables justices of assize, &c. to enquire of the premises in their sessions-leets or law-days, and to hear and determine the same, and which can only be construed to mean the common-law mode of proceeding by indictment or presentment; Shipman *v.* Henbest, 4 T. R. 109. In the argument it was said, that according to this construction the Act could only attach upon three statutes, 5 and 6 Edward VI. c. 14. (repealed by 12 Geo. III. c. 31.) 5 Eliz. c. 4. sec. 39, and another not mentioned. The only penalty under stat. Eliz. which had not fallen into disuse, (that for exercising a trade without having served an apprenticeship) is taken away by stat. 54 Geo. III. c. 96. The statute does not give any new jurisdiction to inferior courts; Farrington *v.* Keymer, Cro. Car. 112; Rex *v.* Galle, Carth. 465. 4 T. R. 116. See also Wms. n. 1 Saund. 312.

No. IV. 21 James I. c. 4.

respectively, only at the choice of the parties which shall or will commence suit, or prosecute for the same, and not elsewhere, save only in the said counties, (1) or places usual for those counties, or any of them: And that the like process upon every popular action, bill, plaint, information, or suit, to be commenced, or sued, or prosecuted after the end of this present session of Parliament, by force of or according to the purport of this Act, be had and awarded, to all intents and purposes, as in an action of trespass, *vi et armis*, at the common law; and that all and all manner of informations, actions, bills, plaints, and suits whatsoever, hereafter to be commenced, sued, prosecuted, or awarded, either by the Attorney-general of his Majesty, his heirs or successors, for the time being, or by any officer or officers whatsoever for the time being, or by any common informer or other person whatsoever, in any of his Majesty's courts at *Westminster*, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void and of none effect: any law, custom, or usage to the contrary thereof notwithstanding.

Upon default of proving that the offence was committed in the same county, the defendant shall be found not guilty.

II. And be it further enacted by the authority aforesaid, That in all informations to be exhibited, and in all bills, counts, plaints, and declarations, in any action or suit to be commenced against any person or persons, either by or on the behalf of the king, or any other, for or concerning any offence committed or to be committed against any penal statute, the offence shall be laid and alleged to have been committed in the said county where such offence was in truth committed, and not elsewhere: And if the defendant to any such information, action, or suit, pleadeth that he oweth nothing, or that he is not guilty; and the plaintiff or informer in such information, action or suit, upon evidence to the jury that shall try such issue, shall not both prove the offence laid in the said information, action, or suit, and that the same offence was committed in that county; then the defendant and defendants shall be found not guilty.

The informer shall make oath that the offence was committed in the same county where the suit is commenced.

III. And be it further enacted by the authority aforesaid, That no officer or minister in any court of record shall receive, file, or enter of record any information, bill, or plaint, count, or declaration, grounded upon the said penal statutes or any of them, which before by this Act are appointed to be heard and determined in their proper counties, until the informer or relator hath first taken a corporal oath (2) before some of the judges of that court, that the offence or offences laid in such information, action, suit or plaint, was or were not committed in any other county than where by the said information, bill, plaint, count, or declaration the same is or are supposed to have been committed, and that he believeth in his conscience the offence was committed, within a year before the information or suit, within the same county where the said information or suit was committed, the same oath to be there entered of record.

The defendant in an information upon a penal statute may plead the general issue.

IV. And be it also enacted by the authority aforesaid, That if any information, suit, or action, shall be brought or exhibited against any person or persons, for any offence committed or to be committed against the form of any penal law, either by or on the behalf of the King, or by any other, or on the behalf of the King and any other, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in

(1) It is settled by several cases, that this statute restrains actions being brought in the courts at Westminster under the stat. 5. Eliz., unless for offences arising in Middlesex, where these courts sit, although the contrary was formerly holden; see the authorities cited 1 Wms. Saund. 312. n. 1. It was usual to sue on that statute in the courts of the counties palatine, &c. in cases arising there. As to the course of proceeding in the courts of oyer and terminer, or sessions, see Wms. n. *ubi supra*.

(2) This provision does not extend to cases arising upon subsequent statutes; French *v.* Coxen, 2 Str. 1031; more fully, Selwyn, N.P. Debt. In White *v.* Boot, 2 T. R. 274, proceedings were stayed for want of an affidavit being made as directed; but in Leigh *v.* Kent, 3 T. R. 360. the Court refused to set aside a verdict on that account, holding that the application was too late; and the Court strongly intimated an opinion that the provision only applied where the action might have been brought in inferior courts, as directed by s. 1.

evidence to the jury that shall try the same, which matter being pleaded, had been a good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matters shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar, or discharge of such information suit or action.

Certain Offences excepted.

V. Provided always, That this Act, or any clause contained therein, shall not extend to any information, suit or action, grounded upon any law or statute made against Popish recusants, or for or concerning Popish recusancy, or against those that shall not frequent the church and hear divine service; nor to any information suit or action for maintenance champerty or buying of titles; nor to any suit or information grounded upon the statute made in the first year of the reign of our Sovereign Lord the King, of a subsidy granted to the King, of tonnage, poundage, wool, &c., nor for or concerning the concealing or defrauding the King, his heirs or successors of any custom, tonnage, poundage, subsidy, impost, or prisage; or for transporting of gold, silver, ordnance, powder, shot, munition of all sorts, wool, wool-fells or leather, but that such offence may be laid or alleged to be in any county, at the pleasure of any informer; any thing in this Act to the contrary notwithstanding.

1 Jac. I. c. 33.

[No. V.] 3 George IV. c. 46.—An Act for the more speedy Return and Levying of Fines Penalties and Forfeitures and Recognizances estreated.—[24th *June* 1822.]

WHEREAS an Act was passed in the twenty-second and twenty-third years of His late Majesty King *Charles* the Second, intituled *An Act for the better and more certain Recovery of Fines and Forfeitures due to His Majesty*, which Act was made perpetual by an Act passed in the fourth and fifth years of the reign of Their late Majesties *William* and *Mary*, intituled, *An Act for reviving continuing and explaining several Laws therein mentioned, which are expired and near expiring*: And whereas an Act was passed in the forty-first year of His late Majesty *George* the Third, intituled *An Act for better Payment of Fines and Forfeitures imposed by Justices out of Sessions in* England: And whereas great delays occur in the return of fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, by or before any Justices of the Peace, or at any General or Quarter Sessions of the Peace in that part of the United Kingdom called *England*: And whereas such delays impede the due administration of justice, as well as the recovery of the fines and forfeitures due to the Crown thereupon, and it is therefore expedient that further provision should be made for the speedy and regular return of all such fines, issues, amerciaments, forfeited recognizances, and sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September*, one thousand eight hundred and twenty-two, so much of the aforesaid Act passed in the twenty-second and twenty-third years of the reign of His late Majesty King *Charles* the Second as relates to fines issues and amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them imposed and adjudged at any Quarter Sessions of the Peace; and also that such part of the aforesaid Act of Their late Majesties *William* and *Mary*, as makes perpetual the aforesaid Provisions contained in the said Act passed in the twenty-second and twenty-third year of the reign of His late Majesty King *Charles* the Second; and likewise so much of the said Act passed in the forty-first year of the reign of His late Majesty

22 & 23 C. 2. c. 22.

4 & 5 W. & M. c. 24.

41 G. 3. c. 85.

So much of recited Acts as relates to Fines, &c. repealed.

No. V. 3 Geo. IV. c. 46.

King *George* the Third as relates to the annual payment of all fines forfeitures and penalties, or such parts thereof as shall be due to the King, imposed and received by any justice out of sessions, and not made payable to any body or bodies corporate, or any Commissioners of any public board, or any other person or persons, into the hands of the Sheriff previous to the *Michaelmas* Sessions; and also so much of the said Act of the forty-first year of the reign of His said late Majesty King *George* the Third, as requires such justices, previous to the *Michaelmas* Sessions yearly, to transmit to the clerk of the peace or town clerk where such fine was imposed an account in writing of all such fines, shall be and are hereby repealed.

Statements of Fines, &c. to be forwarded to the Clerk of the Peace by the Justice by whom such Fine, &c. is imposed.

II. And be it further enacted, That from and after the twenty-ninth day of *September* one thousand eight hundred and twenty-two, all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them (save and except the same shall, by virtue of any Act or Acts of Parliament made or to be made, be otherwise directed to be levied, recovered, appropriated or disposed of), which already are or hereafter shall be set, imposed, lost or forfeited, by or before any Justice or Justices of the Peace in that part of the United Kingdom called *England*, shall be and are hereby required to be certified by the Justice or Justices of the Peace by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall be set, imposed, lost, or forfeited to the clerk of the peace of the county, or town clerk of the city borough or place in writing, containing the names and residences, trade profession or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such Justice or Justices of the Peace, on or before the ensuing General or Quarter Sessions of such county, city, borough, or place respectively; and such clerk of the peace or town clerk shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money, paid or to be paid in lieu or satisfaction of them or any of them imposed or forfeited at such Court of General or Quarter Sessions, and shall, within such time as shall be fixed and determined by such court, not exceeding twenty-one days after the adjournment of such court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule marked (A.) annexed to this Act, to the sheriff of such county or the sheriff bailiff or officer of such city borough or place having execution of process therein respectively, as the case may be, which shall be the authority to such sheriff of such county, or the sheriff bailiff or officer, as the case may be, which shall be the authority to such sheriff of such county, or the sheriff bailiff or officer, as the case may be, for the proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next General or Quarter Sessions of the Peace, there to abide the judgment of the said court.

Clerk of the Peace to copy on a Roll such Fines, &c. at Quarter Sessions, and send a Copy of such Roll, with Writ of Distringas, &c. to the Sheriff, &c.

Clerk of the Peace or Town Clerk to make Oath as to all Fines, &c. which shall be paid.

III. And be it further enacted, That the clerk of the peace or town clerk shall, before he shall deliver the roll to such sheriff bailiff or officer, containing the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required, to make oath before any Justice of the Peace for the county, riding, city, borough, or place for which such clerk of the peace or town clerk shall act; which oath shall be endorsed on the back of the writ, or of the said roll attached thereto, such clerk of the peace or town clerk stating therein all such fines, issues,

amerciaments, forfeited recognizances, sum or sums of money, which shall have been paid or otherwise accounted for; and such oath shall be made in the form following:

Form of Oath.

'I make oath, That this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed, all such fines as have been paid to, or received by me, either in court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever. So help me God.'

Notice to be given to the Sureties.

IV. And be it further enacted, That each and every Justice of the Peace before whom any recognizance shall be entered into or taken shall and is hereby required to give, or cause to be given, at the time of entering into such recognizance, to the person or persons, surety or sureties so entering into the same, and to each of them, a written or printed paper or notice, in the form or to the effect stated in the schedule marked (B.) to this Act annexed, adapting the same to the particular circumstances of the case; and each and every such justice shall in such recognizance state and particularly specify not only the profession, art, mystery, or trade of every person so entering into such recognizance, together with their Christian name and names and surnames, but also the parish township or place of his or her residence; and in case such residence shall be in any city town or borough, shall also state and particularly specify the name of the street and number of the house (if any) in which such person shall reside, and also whether owner or tenant thereof, or lodger therein.

Persons may appeal to Quarter Sessions against Fines, &c. upon giving Security.

V. Provided always, and be it enacted, That if any person on whose goods and chattels such sheriff bailiff or officer shall be authorized to levy such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said sheriff bailiff or officer for his appearance at the next General or Quarter Sessions, then and there to abide the decision of the court, and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expences as shall be ordered and adjudged by the court, it shall be lawful for such sheriff bailiff or officer, and he is hereby authorized and required, to discharge such person so giving such security out of custody: Provided also, that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the court forthwith to issue a writ of *distringas* and *capias* or *fieri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid.

Justices at Quarter Sessions to hear and determine such Appeals.

VI. And be it further enacted, That the Court of General or Quarter Sessions before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorized and required to inquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof; and such order shall be made in the form or to the effect of the schedule marked (C.) to this Act annexed, and shall be signed by the clerk of the peace, which said order shall be a discharge to such sheriff bailiff or officer, on the passing of his accounts at the Exchequer, or before any auditor or other proper officer duly authorized to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff bailiff or other officer, the Justices of the Peace so assembled are hereby empowered either to remand such party to the custody of the sheriff bailiff or other officer, or upon the release of such party from the whole of such forfeited recognizance, to order such party to be discharged from custody, and such order shall be a full and sufficient discharge to the said sheriff bailiff or officer on the passing of his accounts at the Exchequer, or before any auditor or other proper officer duly authorized to pass the same; and it shall and may be lawful to and for the said Court of General or Quarter Sessions to

No. V. 3 Geo. IV. c. 46.

award such costs charges and expences to be paid by either party to the other, as to the said court shall seem just and reasonable.

Sheriff may recover Fines, &c. out of the County where imposed, upon getting his Warrant backed by a Justice of the Peace of the County where theOffender is.

VII. And be it further enacted, That in all cases where the party incurring any fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall reside in another county, or in any city borough or place having peculiar jurisdiction, or shall have fled into any other county, or into any such city borough or place, after such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall have been incurred, or shall have removed his goods and chattels out of the jurisdiction in which such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall have been imposed, it shall be lawful for the said sheriff bailiff or officer, and he is hereby required, to apply to any Justice of the Peace acting for such county, city, borough, or place into which the party may have fled or removed his goods and chattels, and such justice is hereby required, upon proof on oath of the hand-writing of the sheriff or under-sheriff, bailiff or officer granting such warrant, to indorse his name thereon, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same may be directed, to execute the same in such other county, city, borough, or place; and in case sufficient distress shall not be found whereon to levy such fine, issue, amerciament, estreated recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, and all costs and charges attending the recovery thereof, then to take the body of the party, and lodge him in the gaol of the county, city, borough, or place in which the forfeiture had been incurred, there to await the decision of the court at the ensuing General or Quarter Sessions.

Sheriff to return Writ to Quarter Sessions, and indorse on the Roll what has been done in the Execution of the Process, which Return, &c. shall be forwarded by Clerk of the Peace to the Treasury.

VIII. And be it further enacted, That the said sheriff bailiff or officer shall, at the opening of the court, on the first day of the ensuing General or Quarter Sessions, return the said writ, and shall state on the back of the said roll what shall have been done in the execution of such process; which return, together with a duplicate of the roll of fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, at the preceding Quarter Sessions, and the certificate of the court on the back of the roll, stating that due diligence has been exercised on the part of the sheriff, shall be transmitted by the clerk of the peace to the Lords Commissioners of His Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland*.

Proceedings not liable to Stamp Duty.

IX. Provided always, and be it further enacted, That none of the proceedings under this Act shall be liable to or charged with any stamp duty.

Allowance to Sheriff and Clerk of the Peace on Sums levied.

Penalty on Sheriff, &c. for Neglect, 50*l*.

X. And be it further enacted, That the clerk of the peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the said clerk of the peace to an allowance of sixpence for every one hundred words, for all copies of the roll sent to the said Lords Commissioners of the Treasury; and in case any such sheriff, bailiff, officer, or clerk of the peace shall refuse or neglect to do and perform any duty act or thing imposed or required upon or from such sheriff or clerk, bailiff or officer, in manner by this Act directed, then and in every such case, such sheriff, bailiff or officer, or clerk so refusing or neglecting, shall forfeit and pay the sum of fifty pounds, to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case, in any of His Majesty's Courts of Record at *Westminster*, wherein no essoign protection wager of law, or any more than one imparlance shall be allowed.

Not to alter the usual Mode of appropriating Fines.

XI. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend so as to prevent or interfere with the appropriation of any such fines, issues, amerciaments, forfeited

recognizances, sum or sums of money, when so paid or accounted for into the said Court of Exchequer by any such sheriff bailiff or officer; but the same shall and may be applied disposed of and appropriated in such and the like manner as such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid in lieu or satisfaction of them or any of them, paid into the Exchequer, were applied disposed of and appropriated before the passing of this Act.

Compensations to Officers.

XII. Provided also, and be it enacted, That it shall be lawful for the Lords Commissioners of His Majesty's Treasury to make such compensation as they may think fit, for the loss of any legal fees occasioned to the officers thereof, or to the officers of the court of the Duchy of *Lancaster*, by this Act.

Act not to prejudice the Rights, &c. of His Majesty in the Duchy of Lancaster.

XIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be in any ways prejudicial to the rights liberties or privileges of the King's most excellent Majesty, his heirs and successors, in right of his Duchy or County Palatine of *Lancaster*, but that the same rights and privileges shall be enjoyed and used in all respects, and to all intents and purposes whatsoever, in the same manner and form as they were before the passing of this Act; any thing herein contained to the contrary notwithstanding.

Clerks of the Peace, &c. to deliver into the Court of Exchequer yearly a Certificate of all Fines, &c. paid, that the Sheriffs may be charged in their Accounts, and that Parties entitled to Fines, &c. may claim the same.

XIV. Provided always, and be it further enacted, That all and every the clerk and clerks of the peace, and all town clerks, within that part of the United Kingdom called *England*, do and shall, on or before the second *Monday* after the morrow of *All Souls* yearly in every year, make and deliver into the Court of Exchequer a true and perfect duplicate on certificate of all such fines, issues, amerciaments, forfeited recognizances, and sum and sums of money, and other forfeitures whatsoever paid in lieu or satisfaction of them or any of them, as shall be contained in the several rolls or copies which shall be so sent out to the sheriff for the purpose of levying as aforesaid, and which shall have been set, lost, imposed, or forfeited in any of the said sessions of the peace which shall be held before *Michaelmas* in each year, to the intent that the sheriffs, on their apposals in the said Court of Exchequer, may be charged in their accounts with the monies levied and received by him or them respectively upon such writs or otherwise, and that all parties entitled to any such fines, recognizances or other forfeitures, or any portion or portions thereof, may be at liberty to claim the same before the foreign apposer of the said Court of Exchequer, according to the ancient course and practice of the said court.

Saving Rights of Bodies Corporate, &c.

XV. Provided always, and be it further enacted, That nothing in this Act contained shall in any sort extend or be construed to extend to the prejudicing the rights and privileges of any bodies politic or corporate, or their successors, or of any lord or lords of any manor liberty or franchise whatsoever; any thing herein to the contrary thereof in anywise notwithstanding.

Saving the Privileges of the City of London.

XVI. Provided always, and be it enacted, That nothing in this Act contained shall extend to or be in any ways prejudicial to the rights, customs, privileges, liberties, charter or charters of the city of *London*; but that the said city may enjoy the same accordingly, as they formerly have enjoyed the same, in all respects and to all intents and purposes whatsoever, in the same and in as full and ample a manner as they before this Act had enjoyed the same; any thing herein contained to the contrary thereof in anywise notwithstanding.

SCHEDULE (A.)

GEORGE the Fourth, by the Grace of God, of the United Kingdom of *Great Britain* and *Ireland*, King, Defender of the Faith;

To the Sheriff or Bailiff or Officer *(as the case may be)* for the County of [*or* city borough or place, *as the case may be*] greeting.

YOU are hereby required and commanded, as you regard yourself and all yours, That you omit not by reason of any liberty in your county, city

No. VI. 4 Geo. IV. c. 37.

borough or place, as the case may be, but that you enter the same, and of all the goods and chattels, lands and tenements of all and singular the persons in the several extracts of this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged, so that the money may be ready for payment at the next General or Quarter Sessions of the Peace, to be paid over in such manner as any two or more of the Lords Commissioners of His Majesty's Treasury may direct; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol (of the county city &c.) there to await the decision of the justices assembled at the next General or Quarter Sessions, unless the parties shall have given sufficient security for their appearance at such sessions, for which you will be held answerable, and have you there then this writ. Witness Keeper of the Rolls of the County at in the county of the day of in the Year of our Reign.

Clerk of the Peace.

SCHEDULE (B.)

TAKE Notice, That you of to wit. are bound in the sum of Pounds, and your sureties in the sums of pounds each, to appear at the Quarter or General Sessions of the Peace for the county of to be holden at on the day of next, and unless you personally make your appearance accordingly, the recognizances entered into by yourself and securities will be forthwith levied on you and your bail. Dated this day of one thousand eight hundred and twenty .

Justice of the Peace.

SCHEDULE (C.)

To the Sheriff [Bailiff or Officer, *as the case may be*] of the county, city, borough or place, *as the case may be*, of

WHEREAS hath appeared before the justices assembled at the General or Quarter Sessions [*as the case may be*] held at the on the day of has forfeited the sum of [*here describe the nature of the fine or forfeiture*], and having made it appear to the satisfaction of the justices so assembled, that he should be relieved from the payment of the said sum of [*or if the penalty is mitigated, state from what part thereof,*] you are therefore hereby required to discharge the said sum of from the estreat roll delivered to you after the Quarter Sessions held at for which discharge this warrant shall be your authority, and shall exonerate you from the said charge on the final passing of your accounts at the Exchequer, or before any other officer duly authorized to pass such account.

By Order of the Court.

[No. VI.] 4 George IV. c. 37.—An Act to amend an Act for the more speedy Return and Levying of Fines, Penalties and Forfeitures, and Recognizances estreated.—[27th *June* 1823.]

3 G. 4. c. 46.

WHEREAS an Act passed in the third year of the reign of His present Majesty, intituled *An Act for the more speedy Return and Levying of Fines Penalties and Forfeitures, and Recognizances estreated:* And whereas it is expedient that some of the provisions of the said Act should

No. VI. 4 Geo. IV. c. 37.

be amended: May it therefore please your Majesty that it may be enacted: and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the justices assembled at any General or Quarter Sessions of the Peace, and they are hereby authorized and required, at the following or any subsequent General or Quarter Sessions held after the return of the Writ and Roll issued from any preceding General or Quarter Sessions, at the opening of the court, to insert or cause to be inserted in any following roll, all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, which have not been duly levied or recovered or properly accounted for by the sheriff bailiff or other officer, or have not been discharged on appeal before the General or Quarter Sessions, or by sign manual warrant or authority of any three or more of the Commissioners of His Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland*, and so to continue such process from sessions to sessions, till it shall be duly ascertained, to the satisfaction of the said Commissioners of His Majesty's Treasury, that the party in default has not any goods or chattels, lands or tenements, in the county, division, riding, city, town, or place on which a levy can be made, nor in any other county, division, riding, city, town, or place in *Great Britain*, and that he is not to be found or that his body cannot be lodged in any of His Majesty's gaols: Provided always, that the said sheriff bailiff or other officer to whom the writ of distringas and capias or fieri facias, or other writ deemed necessary by the justices at any General or Quarter Sessions to meet the exigency of the case, shall be sent by order of the said court, shall keep and detain in his possession the writ or writs so directed to him, and the roll or rolls attached to such writ or writs, delivering to the said Court of General or Quarter Sessions, a copy of such roll or rolls, on the first day of the sitting of the said court, and also a copy of any former roll or rolls, where the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall not have been delivered; and such original writ and roll, or writs and rolls, shall continue in force and effect, and shall be sufficient authority, without any further writ or roll; and such sheriff bailiff or other officer is hereby authorized and required, on quitting his office, to deliver over to his successor, all rolls and writs in his possession, particularizing any fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, in order that the sheriff bailiff or other officer coming into office may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts at the Exchequer, or before any auditor or auditors, or other person duly authorized to pass the same, the officer or officers entrusted with the execution of the process in any county, division, riding, city, town, or place, being first duly and diligently examined on oath by the court, at the delivery of the roll, on the first day of each General or Quarter Sessions, and in case such examination should not then take place, then on the subsequent day; and every such examination shall be duly recorded by the clerk of the peace or town clerk, or other proper officer, in order that such sheriff bailiff or other officer may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

Justices in Sessions may insert in following Rolls, all such Fines, &c. as have not been levied or accounted for by the Sheriff, &c. or that have not been discharged.

Sheriff to detain the original Writs in his Possession, which shall continue in force, and be Authority to act upon.

Sheriff on quitting Office to deliver over to his Successor all Rolls and Writs, particularizing Fines, &c. that Means may be used for Recovery.

II. And whereas it is in and by the said recited Act directed, that in all cases where the party incurring any fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall reside in another county, or in any city borough or place having peculiar jurisdiction, or shall have fled into any other county, or into any such city borough or place, after such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall have been had been imposed, repealed.

Provision of recited Act as to levying Fines, &c. on Goods not in the Jurisdiction in which the Fines, &c.

No. VI. 4 Geo. IV. c. 37.

incurred, or shall have removed his goods and chattels out of the jurisdiction in which such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them shall have been imposed, it shall be lawful for the said sheriff bailiff or officer, and he is hereby required, to apply to any Justice of the Peace acting for such county, city, borough, or place into which the party may have fled, or removed his goods and chattels; and such justice is hereby required, upon proof on oath of the handwriting of the sheriff or under sheriff bailiff or officer granting such warrant, to endorse his name thereon, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same may be directed to execute the same in such other county, city, borough, or place; and in case sufficient distress shall not be found whereon to levy such fine, issue, amerciament, estreated recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, and all costs and charges attending the recovery thereof, then to take the body of the party, and lodge him in the gaol of the county, city, borough, or place in which the forfeiture had been incurred, there to await the decision of the court at the ensuing General or Quarter Sessions: And whereas such provision has been found ineffectual for the purposes thereby intended, and it is necessary that better provisions should be made for that purpose; be it therefore enacted, That so much of the said recited Act shall be repealed, and is hereby declared to be null and void, to all intents and purposes whatever.

Where Party subject to Fines, &c. resides in another County, or has removed, the Sheriff may issue his Warrant to the Sheriff acting for the Place where the Defaulter resides, or where his Goods are found, requiring him to execute the Writ.

III. And be it further enacted, That in all cases where the party incurring or subject to any fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall reside or shall have fled or removed from or out of the jurisdiction of the sheriff bailiff or other officer, in which any such fine, issue, amerciament, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall have been incurred imposed, or forfeited, or become due, it shall be lawful for such sheriff bailiff or other officer, and he is hereby authorized and required to issue his warrant, together with a copy of the writ, directed to the sheriff bailiff or other officer acting for the county, riding, city, borough, or place in which such person shall then reside or be, or in which any goods or chattels or other property shall be found, requiring such sheriff bailiff or other officer to execute such writ, and every such last-mentioned sheriff bailiff or other officer, is hereby authorized and required to act in all respects under such warrant, in the same manner as if the original writ had been delivered to him by order of the court of the General or Quarter Sessions of the county, riding, city, borough, or place for which such sheriff bailiff or other officer shall act; and the said sheriff bailiff or other officer is hereby required, within thirty days after the receipt of such warrant, to return to the sheriff bailiff or other officer, from whom he shall have received the same, what he shall have done in the execution of such process, and whether the party shall have given good and sufficient security to appeal at the ensuing General or Quarter Sessions to be held for the county, riding, city, borough, or place from which the writ issued; and in case a levy shall have been made, to pay over all monies received in pursuance of the warrant to the sheriff bailiff or other officer from whom he shall have received the same.

Sheriff, &c. to render an Account yearly of all Persons incurring Fines, &c.

IV. And be it further enacted, That every sheriff bailiff or other officer acting for any county, division, riding, city, borough, or place, shall and he is hereby required to make up or cause to be made up annually, and immediately after the expiration of the year for which he shall act, or after the usual period for making up his account, in case he shall act under any grant, appointment or other authority for a longer period than one year, an account in writing, containing the names and residences of all persons incurring fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, which he has been authorized or required to levy by virtue of any writ or writs issued to him, or to any predecessor in office; and in case any fine, issue, amerciament, forfeited recognizance, sum or

sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall not have been levied or paid, the causes of non-payment shall be fully and particularly stated; and such account such sheriff bailiff or other officer is hereby required to transmit, within thirty days from the expiration of the year for which such account ought to be made up, to the Commissioners of His Majesty's Treasury, or at or within such other period as such sheriff bailiff or other officer shall be required by the said Commissioners of His Majesty's Treasury, or any three or more of them, in order that such account may be duly examined checked and inspected, under the direction of the said Commissioners of His Majesty's Treasury, or any three or more of them; and when so examined and approved, such account shall be transmitted to the proper officer in the Court of Exchequer, or to the auditor or other officer duly authorized to pass such account.

Causes of Non-payment to be stated.

Account to be transmitted to the Treasury.

V. And be it further enacted, That every clerk of the peace and town clerk, or other proper officer, is hereby required, within twenty days from the opening of the Court of General or Quarter Sessions, to send to the Commissioners of His Majesty's Treasury a copy or an extract of the roll or rolls delivered by the sheriff bailiff or other officer, on the first day of the opening of such Court of General or Quarter Sessions, in such form as shall be required by the said Commissioners of His Majesty's Treasury, also the causes of discharge in case any person shall have been relieved on appeal to the said Court of General or Quarter Sessions, and the answer given by any sheriff bailiff or other officer to such court, where any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, has not been received by such sheriff bailiff or other officer duly authorized to receive the same.

Clerks of the Peace, &c. to send to the Treasury, within 20 Days from the opening of the Quarter Sessions, Copy of the Rolls delivered by the Sheriff.

No. I.
7 & 8 G. IV.
c. 31.

PART IV.

CLASS XXII.

Actions against the Hundred.

[No. I.] 7 & 8 George IV. c. 31.—An Act for consolidating and amending the Laws in *England* relative to Remedies against the Hundred.—[21st *June* 1827.]

WHEREAS it is expedient that the several statutes now in force in that part of the United Kingdom called *England*, relative to remedies against the hundred for the damage occasioned by persons riotously and tumultuously assembled, should be amended and consolidated into one Act; and with that view the said statutes are, by an Act of the present session of Parliament, repealed, from and after the last day of *June* in the present year, except as to offences and other matters committed or done before or upon that day; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this Act shall commence on the first day of *July* in the present year.

Commencement of Act.

The Hundred shall make full Compensation for the Damage done by Rioters in certain Cases.

II. And be it enacted, That if any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of *England* and *Ireland*, duly registered or recorded, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam-engine or other engine for sinking draining or working any mine, or any staith building or erection used in conducting the business of any mine, or any bridge waggon way or trunk for conveying minerals from any mine, shall be feloniously demolished pulled down or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed, shall be liable to yield full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects herein-before enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture furniture or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid.

Party damnified to comply with certain Conditions.

III. Provided always, and be it enacted, That no action or summary proceeding, as herein-after mentioned, shall be maintainable by virtue of this Act, for the damage caused by any of the said offences, unless the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, shall within seven days after the commission of the offence go before some Justice of the Peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognizance before him to prosecute the offenders when apprehended: Provided also, that no person shall be enabled to bring any such action, unless he shall commence the same within three calendar months after the commission of the offence.

Limitation of Time for Actions.

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Process in the Action against the Hundred to be served on the High Constable, who may defend, or let judgment go by default, as advised.

IV. And be it enacted, That no process for appearance in any action to be brought by virtue of this Act against any hundred or other like district shall be served on any inhabitant thereof, except on the high constable, or some one of the high constables (if there be more than one), who shall within seven days after such service give notice thereof to two Justices of the Peace of the county riding or division in which such hundred or district shall be situate, residing in or acting for the hundred or district; and such high constable is hereby empowered to cause to be entered an appearance in the said action, and also to defend the same on behalf of the inhabitants of the hundred or district, as he shall be advised; or, instead of defending the same, it shall be lawful for him, with the consent and approbation of such justices, to suffer judgment to go by default; and the person upon whom, as high constable, the process in the action shall be served, shall, notwithstanding the expiration of his office, continue to act for all the purposes of this Act until the termination of all proceedings in and consequent upon such action; but if such person shall die before such termination, the succeeding high constable shall act in his stead.

Inhabitants of the Hundred competent Witnesses.

V. And be it enacted, That in any action to be brought by virtue of this Act against the inhabitants of any hundred or other like district, or against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town or place, as is herein-after mentioned, no inhabitant thereof shall, by reason of any interest arising from such inhabitancy, be exempted or precluded from giving evidence either for the plaintiff or for the defendants.

If Plaintiff recovers, the Sheriff, on receipt of the Writ of Execution, shall make out a Warrant directing the Treasurer of the County to pay the Amount.

VI. And be it enacted, That wherever the plaintiff in any such action shall recover judgment, whether after verdict or by default or otherwise, no writ of execution shall be executed on any inhabitant of the hundred or other like district, nor on such high constable; but the Sheriff, upon the receipt of the writ of execution, shall (on payment of the fee of five shillings and no more) make his warrant to the treasurer of the county riding or division in which such hundred or other like district shall be situate, commanding him to pay to the plaintiff the sum by the said writ directed to be levied, and such treasurer is hereby required to pay the same, as also any other sum ordered to be paid by him by virtue of this Act, out of any public money which shall then be in his hands, or shall come into his hands, before the next General or Quarter Sessions of the Peace for the said county riding or division; and if there be not sufficient money for that purpose before such sessions, he shall give notice thereof to the Justices of the Peace at such sessions, who shall proceed in the manner herein-after mentioned.

Mode of reimbursing the High Constable for his Expences in defending the Action, &c.

Reimbursing the County Treasurer.

VII. And, for the purpose of indemnifying the high constable and the county treasurer, be it enacted, That if such high constable of the hundred or other district sued shall produce and prove before any two Justices of the Peace of the county riding or division, residing in or acting for such hundred or district, an account of the just and necessary expences which he shall have incurred in consequence of any such action as aforesaid, such justices shall make an order for the payment thereof upon the treasurer of the county riding or division in which such hundred or district shall be situate; and if in any such action judgment shall be given against the plaintiff, the high constable shall in like manner be reimbursed for the just and necessary expences by him incurred in consequence of such action, over and above the taxed costs to be paid by the plaintiff in such case; and if it shall be proved to any two such justices that the plaintiff in the action is insolvent, so that the high constable can have no relief as to such taxed costs, such justices shall make an order upon the treasurer of the county riding or division as aforesaid, for the payment of the amount of such taxed costs; and the justices of the Peace at the next General or Quarter Sessions of the Peace to be holden for any such county riding or division, or any adjournment thereof, shall direct such sum or sums of money as shall have been paid or ordered to be paid by the treasurer by virtue of any such warrant or order as herein-before mentioned, to be raised on the hundred or other like district against the inhabitants of which any such action shall have been brought,

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over and above the general rate to be paid by such hundred or district in common with the rest of the county riding or division, under the Acts relating to county rates; and such sum or sums shall be raised in the manner directed by those Acts, and shall be forthwith paid over to the treasurer.

Mode of Proceeding in Cases where the Damage does not exceed 30*l.*

VIII. And whereas it is expedient to provide a summary mode of proceeding where the damage is of small amount; be it therefore enacted, That it shall not be lawful for any person to commence any action against the inhabitants of any hundred or other like district, where the damage alleged to have been sustained by reason of any of the offences in this Act mentioned, shall not exceed the sum of thirty pounds, but the party damnified shall within seven days after the commission of the offence give a notice in writing of his claim for compensation, according to the form in the schedule hereunto annexed, to the high constable or some one of the high constables (if there be more than one) of the hundred or other like district in which the offence shall have been committed; and such high constable shall, within seven days after the receipt of the notice, exhibit the same to some two Justices of the Peace of the county riding or division in which such hundred or district shall be situate, residing in or acting for such hundred or district, and they shall thereupon appoint a special Petty Session of all the Justices of the Peace of the county riding or division, acting for such hundred or district, to be holden within not less than twenty nor more than thirty days next after the exhibition of such notice, for the purpose of hearing and determining any claim which may be then and there brought before them on account of any such damage; and such high constable shall, within three days after such appointment, give notice in writing to the claimant, of the day and hour and place appointed for holding such Petty Session, and shall within ten days give the like notice to all the justices acting for such hundred or district; and the claimant is hereby required to cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or chapel door, or other conspicuous part of the parish township or place in which such damage shall have been sustained, on two *Sundays* preceding the day of holding such Petty Session.

Such Cases to be settled by the Justices at a Special Petty Sessions.

IX. And be it enacted, That it shall be lawful for the justices, not being less than two, at such Petty Session or any adjournment thereof, to hear and examine upon oath or affirmation the claimant, and any of the inhabitants of the hundred or other like district, and their several witnesses, concerning any such offence, and the damage sustained thereby; and thereupon the said justices, or the major part of them, if they shall find that the claimant has sustained any damage by means of any such offence, shall make an order for payment of the amount of such damage to him, together with his reasonable costs and charges, and also an order for payment of the costs and charges (if any) of the high constable or inhabitants, and shall direct such order or orders to the treasurer of the county riding or division in which such hundred or district shall be situate, who shall pay the same to the party or parties therein named, and shall be reimbursed for the same in the manner herein-before directed.

Penalty on High Constable for Neglect.

X. And be it enacted, That if any high constable shall refuse or neglect to exhibit or give such notice as is required in any of the cases aforesaid, it shall be lawful for the party damnified to sue him for the amount of the damage sustained, such amount to be recovered by an action on the case, together with full costs of suit.

Proceeding in case of Damage to a Church or Chapel.

XI. And be it enacted, That every action or summary claim to recover compensation for the damage caused to any church or chapel by any of the offences in this Act mentioned, shall be brought in the name of the rector vicar or curate of such church or chapel, or in case there be no rector vicar or curate, then in the names of the church or chapel-wardens, if there be any such, and if not, in the name or names of any one or more of the persons in whom the property of such chapel may be vested; and the amount recovered in any such case shall be applied in the rebuilding or repairing such church or chapel; and where any of the

offences in this Act mentioned shall be committed on any property belonging to a body corporate, such body may recover compensation against the hundred or other like district, in the same manner and subject to the same conditions as any person damnified is by this Act enabled to do: Provided always, that the several conditions which are herein-before required to be performed by or on behalf of any person damnified, may, in the case of a body corporate, be performed by any officer of such body on behalf thereof.

In case of Damage to Property belonging to a Corporation.

XII. And whereas the offences for which compensation is granted by virtue of this Act may be committed in counties of cities and towns, or in such liberties, franchises, cities, towns and places, as either do not contribute at all to the payment of any county rate, or contribute thereto, but not as being part of any hundred or other like district; and it is expedient to provide for all such cases, be it therefore enacted, That where any of the offences in this Act mentioned shall be committed in a county of a city or town, or in any such liberty, franchise, city, town or place, the inhabitants thereof shall be liable to yield compensation in the same manner, and under the same conditions and restrictions in all respects, as the inhabitants of the hundred; and every thing in this Act in anywise relating to a hundred, or to the inhabitants thereof, shall equally apply to every county of a city or town, and to every such liberty, franchise, city, town and place, and to the inhabitants thereof; and where the Justices of the Peace of the county riding or division are excluded from holding jurisdiction in any such liberty, franchise, city, town or place, in every such case all the powers authorities and duties by this Act given to or imposed on such justices, shall be exercised and performed by the Justices of the Peace of the liberty, franchise, city, town, or place in which the offence shall be committed; and where the offence shall be committed in a county of a city or town, all the like powers authorities and duties shall be exercised and performed by the Justices of the Peace of such county of a city or town; and in every action to be brought or summary claim to be preferred under this Act against the inhabitants of a county of a city or town, or of any such liberty, franchise, city, town or place, the process for appearance in the action, and the notice required in the case of the claim, shall be served upon some one peace officer of such county, liberty, franchise, city, town or place; and all matters which by this Act the high constable of a hundred is authorized or required to do in either of such cases, shall be done by the peace officer so served, who shall have the same powers rights and remedies as such high constable has by virtue of this Act, and shall be subject to the same liabilities; and shall, notwithstanding the expiration of his office, continue to act for all the purposes of this Act until the termination of all proceedings in and consequent upon such action or claim; but if he shall die before such termination, his successor shall act in his stead.

Where the Damage is committed in any County of a City, &c. or in any Liberty, &c. which is not within any Hundred, or does not contribute to the County Rate, such County, Liberty, &c. shall be liable like the Hundred.

XIII. And for securing the due execution of writs in the Cinque Ports, and in places where writs are directed to other officers than the sheriff, and in liberties where the sheriff is not warranted in executing writs, be it enacted, That all other such officers to whom any writ of execution under this Act shall be directed, by whatsoever name they shall be known, shall have the same power of granting a warrant for payment of the sum by such writ directed to be levied as is hereby given to the sheriff in case of a writ of execution directed to him; and that every sheriff and other such officer as aforesaid shall have authority to grant his warrant under this Act, notwithstanding the offence shall have been committed in, or the treasurer or other person to whom such warrant shall be directed shall reside or be in any liberty where the sheriff or officer is not warranted in executing writs.

Provision for executing Writs in certain Places.

XIV. And as to the mode of payment and reimbursement under this Act in such liberties, franchises, cities, towns, and places as contribute to the payment of the county rate, but not as being part of any hundred, be

Mode of Reimbursement in Liberties, Cities, and Towns not within any Hundred, but contributing to the County Rate.

No. I. 7 & 8 G. IV. c. 31.

it enacted, That the warrant of the sheriff or other officer upon any writ of execution against the inhabitants of any such liberty, franchise, city, town or place, and every order of justices for payment to the party damnified therein, or to the peace officer or inhabitants thereof, by virtue of this Act, shall be directed to the treasurer of the county riding or division in which such liberty, franchise, city, town, or place shall be situate, who is hereby required to pay the same; and the Justices of the Peace of such county riding or division, at their next General or Quarter Sessions of the Peace, or any adjournment thereof, shall direct such sum or sums of money as shall have been so paid or ordered to be paid by the treasurer to be raised on such liberty, franchise, city, town or place, over and above the general rate to be paid by the same in common with the rest of the county riding or division, under the Acts relating to county rates, and such sum or sums shall be raised in the manner directed by those Acts, and shall be forthwith paid over to the treasurer.

Mode of Reimbursement in Counties of Cities, and in Liberties, Cities, and Towns not contributing to any County Rate.

XV. And as to the mode of payment and reimbursement under this Act in counties of cities and towns, and in such liberties, franchises, cities, towns, and places as do not contribute to the payment of the general county rate, be it enacted, That all sums of money payable either by virtue of any warrant of the sheriff or other officer, or of any order or orders arising out of any action or summary claim against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, shall be paid out of the rate (if any) in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund therein, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such county, liberty, franchise, city, town, or place, the same shall be paid out of the rate or fund for the relief of the poor of the particular parish, township, district, or precinct therein, where the offence was committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and in every such case the warrant and orders shall be directed and delivered to such treasurer overseers or other officers respectively, instead of the treasurer of the county riding or division, as the case may require.

This Act not to extend to Scotland or Ireland.

XVI. Provided always, and be it enacted, That nothing herein contained shall extend to *Scotland* or *Ireland*.

SCHEDULE.

FORM of NOTICE to the High Constable of a Hundred or other like District, or to the Peace Officer of a County of a City or Town, or of a Liberty, Franchise, City, Town, or Place.

To the High Constable [*or* to One of the High Constables] of, &c. [*or* to a Peace Officer of, &c.]

I HEREBY give you notice, That I intend to claim compensation from the inhabitants of [*here specify the hundred or other like district, or county of a city, &c., or liberty, franchise, &c, as the case may be*], on account of the damage which I have sustained by means of [*here state the offence, the time and place where it was committed, and the nature and amount of the damage*]; and I hereby require you, within seven days after your receipt of this notice, to exhibit the same to some two Justices of the Peace of the county [riding *or* division] of residing in or acting for the said hundred, &c. [*or if in a liberty, franchise, &c. where the justices of the county riding or division have no jurisdiction, then say*, to some two Justices of the Peace of, *naming the liberty, franchise, &c.*] [*or if in a county of a city, &c. then say*, to some two Justices of the Peace of, *naming the county of the city, &c.*], in order that they may appoint a time and place for holding a Special Petty Session to hear and determine my claim for compensation by virtue of an Act passed in the seventh and eighth years of the reign of King *George* the Fourth, intituled *An Act for consolidating and amending the Laws in* England *relative to Remedies against the Hundred*; and you are required to give me notice of the day

hour and place appointed for holding such Petty Session within three days after the justices shall have appointed the same. Given under my hand this day of in the year of our Lord

(Signed) *A. B.*

FORM of NOTICE to be placed on the Church or Chapel Door or other conspicuous Part of the Parish Township or Place (*as the case may be*).

I HEREBY give notice, That I shall apply for compensation to the Justices of the Peace at a Special Petty Sessions to be holden at on the day of next, at the hour of in the forenoon, on account of the damage which I have sustained by means of [*here state the offence, the time and place where it was committed, and the nature and amount of the damage, in the same manner as in the preceding form*]. Given under my hand this day of in the year of our Lord

(Signed) *A. B.*

PART IV.

CLASS XXIII.

King's Debts.

[No. I.] 9 Henry III. (Magna Charta) c. 8.—How Sureties shall be charged to the King.

[Inserted ante, Part III. Class II.]

[No. II.] 51 Henry III. st. 4.—What Distress shall be taken for the King's Debts, and how it shall be used.

[Inserted Part II. Class XII. No. 1.]

[No. III.] *Statutum* De Scaccario, 51 Henry III. stat. 5.—When the King's Fermors, Sheriffs, and Bailiffs, shall make their Accompts and Payments. Who shall be Escheators in several Shires.

51 Henry III. stat. 5.

'THE King commandeth, that all manner of bailiffs, sheriffs, and 'other officers, as well the justices of *Chester*, and other bailiffs of 'these counties, as other that be receivers of issues, of wards of es- 'cheats, of their bailiwicks, shall be answerable in the Exchequer, and 'there shall make account to the treasurer and barons * *of the same* 'place. And that all sheriffs, fermors, bailiffs of franchises, and other, 'who ought to come to the *profer* in the Exchequer, the *Monday* after the 'feast of *St. Michael*, and the *Monday* after the *Utas* of *Easter*, to pay 'their ferms, rents, and issues belonging to the King, and †*shall bring at* 'the foresaid terms, the foresaid ferms, rents, and issues due, wholly into 'the Exchequer, as before is mentioned. And if they make default, 'their bodies shall remain without departing from thence, until they 'have paid or made agreement; and he that will not come at the terms 'aforesaid, shall be amerced after the custom of the Exchequer; and 'the sheriffs and bailiffs at the same terms shall bring and pay such 'money as they have received of the summons of the Exchequer, and 'other the King's debts, and shall be prepared and ready to make full 'accompt of the things aforesaid.

When the King's bailiffs and officers shall account.

[* The words in italics not in the original.]

[† For "shall bring at the aforesaidterms, &c." *read* "shall come at the aforesaid terms, and shall there bring in full the aforesaid ferms, rents and issues, and pay them into the Exchequer."]

'II. And that all bailiffs of franchises, which ought to levy the King's 'debts, and be answerable to the sheriffs thereof, shall come and ac- 'compt sufficiently, according to the extreats of the summons of the 'Exchequer; and such as do not, their bodies shall remain in ward of 'the sheriffs; and for default in them, the sheriffs shall cause the debts 'to be levied by their own bailiffs, where they have power, as they have 'used to do in time passed. And if the bailiffs do not come in at the 'day that the sheriff shall give them knowledge, the sheriff shall enter 'into the same franchises, and levy the debts with his own hand.

Bailiffs of franchises accompt.

'III. Concerning justices of *Chester*, and bailiffs thereof, the King 'willeth, that they, or one of them, shall come at the *profer* of *St. Mi-* 'chael every year, when they ought to give account unto the King; and 'at the *profer* of the *utas* of *Easter* they shall come likewise, and bring 'in that which they owe to the King for that term; and the justices of

The justices and bailiffs of Chester's accompt.

No. III. 51 Hen. III. stat. 5.

'*Chester*, shall have day to account from year to year in *quindena* '*Paschæ*; and the bailiffs thereof the morrow of *Easter utas*. And that 'all sheriffs of *England*, except the sheriffs of *Westmoreland*, *Lancaster*, '*Worcester*, *Rutland*, and *Cornwall*, shall from henceforth keep all 'such wards, and escheats, that are not in other fees, as belong to 'the King, which be within their shires; and of the issues thereof they 'shall be answerable in the Exchequer at the terms aforesaid; (1) *and at 'their turns that they make in their shires, they shall find office of other 'things, which the King's escheators have not used to find of that which 'belongeth unto the King, once* or twice in the year, to as little grievance 'of the people as they can. And the sheriffs shall seize the escheats that 'fall to remain unto the King in fee, and shall certify the King of them 'without delay.

Sheriffs shall keep the King's wards and escheats.

Three surveyors.

'IV. And the King shall assign three able persons that shall go through-'out the realm, to survey and find the wards and escheats aforesaid, 'from year to year, when they shall think requisite. And the sheriffs by 'their counsel shall approve, and let to ferm, or otherwise, such wards 'and escheats, as they shall think most for the King's advantage.

Wards and escheats let to ferm.

Sheriffs escheators in other shires.

'V. Touching the five shires beforenamed, the King will, that the sheriff 'of *Cumberland* shall execute the office of escheator in the shires of '*Westmoreland*, and *Lancaster*; and the sheriff of *Nottingham*, in *Rut-'land*; and the sheriff of *Gloucester*, in *Worcester*; and the sheriff of '*Devonshire*, in *Cornwall*; and shall safely keep the King his wards and 'escheats in the same shires, and shall be answerable in the Exchequer 'for the issues of them, as well as for their own shires. And the three 'able persons aforesaid shall survey and extend such wards and escheats, 'as well there as in other places, and those shall be approved by their 'counsel. And when the sheriffs do account for their counties, they 'shall account for such wards and escheats. And in like manner shall 'the justices of *Chester* do, and their bailiffs also, every one for his baili-'wick. And the said three able persons shall keep the King's demeans, 'and shall approve them as they shall think best for the King's advan-'tage, and shall be answerable in the Exchequer for the issues: And 'they shall have power to let forth small manors and demeans to folk of 'the same places, or to other, according to their discretion, and shall 'let them to ferm from year to year, as they shall think most to the 'King's profit: And the fermers shall be chargeable for their ferms unto 'the principal approvers, and they unto the Exchequer, the Morrow 'next after the Ascension, from year to year.

Collectors of the custom of woolls.

'VI. And the principal collectors of the custom of woolls, at the two 'terms before mentioned, shall pay all such money as they have re-'ceived of the said custom, and shall make account from year to year 'clearly of all parcels received in any of the ports, or other places of 'the realm, so that they shall answer for every ship where it was charged, 'and how much wooll it carried, and for every other charge in the ship, 'whereof custom is due, and for the whole receipt.

The account of the keeper of the King's wardrobe. The King's debt shall first be heard.

'VII. And the warden of the King's wardrobe shall make account 'yearly in the Exchequer in the Feast of St. *Margaret*; and the treasurer 'and barons of the Exchequer shall be charged by oath, that they shall 'not attend to hear the pleas or matters of other men, while they have 'to do with the King's business, if it be not a matter that concerneth 'the King's own debt. And when a sheriff or bailiff hath begun his ac-'compt, none other shall be received to account, until he that was first 'appointed hath clearly accounted, and his money received. And that 'the constable, marshal, chamberlain, and other that are of fee in the 'Exchequer, from henceforth shall present unto the King such as they 'have put in their places to do their offices, which must be of good 'fame, and sufficient, for whose Acts themselves will answer.

(1) The meaning of this sentence seems to be as follows:—And at their turns which they make in their shires, they shall be answerable for their office, and for other things which the escheators used to do, and which belong to the escheat, once, &c. N. B. What follows in the next sentence but one clears up this passage.—*Note to Runnington's Edition of the Statutes.*

No. III. 51 Hen. III. stat. 5.

Deputy officers in the Exchequer.

'VIII. And the King commandeth the treasurer, and barons of the 'Exchequer, upon their allegiance, and by the oath that they have 'made to him, that they shall not assign any in their rooms, but such as 'this Act meaneth of, and that the Exchequer be not charged with more 'persons than is necessary. And that none of them, that be sworn to 'the King, shall put in his room any other clerk or lay person, except 'he be sworn, without special licence of the treasurer; and if any be, 'he shall be forthwith removed from his office, and none other shall be 'received in his stead without the King's licence. And if any that is 'received without the treasurer's licence do trespass after, punishment 'shall be done as well to the assignor as to him that is assigned, accord-'ing to the trespass. And if both be unsufficient, their superior shall 'be punished, whether he be officer of fee, or other. And the treasurer 'shall put no other in his room, until he hath commandment from the 'King. And if he that keepeth the room of another, by licence of the 'treasurer, doth any thing that he ought not to do, he shall be punished 'according to the trespass, if he have whereof; and if he have not, he 'that put him in office shall be charged for his trespass; and if he that 'put him in office be not sufficient, his superior shall be charged, 'whether he be of fee or otherwise.

* Of the wooll-staple is inserted by mistake.

† Not in the original.

The King's officers that ought to accompt.

'IX. And they * of the wooll-staple shall make oath, that if any of 'them may perceive that another doth commit any default, offence, or 'other thing † *dishonest in the office of the wooll-staple, or that he hath* '*done before*, that they shall certify it to the treasurer, or to the barons, 'or to some of them, who shall cause it to be amended, or to the King 'himself, if need require. And that about the Feast of St. *Margaret*, 'before that the Exchequer be closed, they shall cause a search to be 'made, whether any sheriff or bailiff, that ought to have accompted the 'same year, have not, and thereupon a remembrance in a roll shall be 'made by itself. And if it be a sheriff, his accompt shall be first heard 'after *Michaelmas*, before that any other be received to accompt: And 'if he be a bailiff, he shall be summoned or distrained to come at a 'certain day for to accompt, so that no accompt shall be suffered to 'sleep. And forasmuch as sheriffs, constables, and other, obtain many 'times outrageous allowances, by pretence of the King's works, and

Surveyors of the King's works.

‡ Of good men.

'other things done and provided by his commandment; it is provided, 'that all surveyors of the King's works shall be chosen by the oath‡ of 'twelve men, and of such as are best skilled, and will and may attend 'best to that office; and that they be sufficient to answer the King, if 'need be, and shall swear that they bear lawful witness. And if the 'King or barons of the Exchequer have any suspicion of false allowances 'of charges, or other things, the truth must be inquired; and he that is 'attainted shall answer to the King for as much as the allowance 'amounteth unto, and shall be imprisoned ‖ *one year and forty days*, 'and shall be punished at the King's pleasure, and the surveyors shall be 'punished for their consent. And likewise he that upon the accompt 'did conceal and keep secret such things, whereof he ought to have 'charged himself, shall be punished in like wise as he that admitted 'such false allowances.

‖ Not in the original.

Extreats of fines and amerciaments shall be delivered in the Exchequer

'X. And that all the justices, commissioners, and other, shall from 'henceforth deliver into the Exchequer, at the Feast of St. *Michael*, 'from year to year, the extreats of fines and amerciaments made and 'taxed before them, and of all things wherefore the extreats are wont 'to be delivered there. And they of the Exchequer shall make extreats 'of the summons through all shires, saving that the extreats in the eyre 'of all pleas shall be delivered immediately after the eyre made.'

[Numbers IV. and V. omitted.]

[No. VI.] 3 Edward I. (Westminster) c. 19.—A Sheriff having received the King's Debt, shall Discharge the Debtor.

No. VI. 3 Edward I. c. 19.

'IN right of the sheriffs, or other, which answer by their own hands unto the Exchequer, and which have received the King's father's debts, or the King's own debts before this time, and have not acquitted the debtors in the Exchequer; it is provided, That the King shall send good and lawful men through every shire, to hear all such as will complain thereof, and to determine the matters there, that all such as can prove that they have paid, shall be thereof acquitted for ever (whether the sheriffs or other be living or dead) in a certain form that shall be delivered them; and such as have not so done (if they be living) shall be grievously punished; and if they be dead, their heirs shall answer, and be charged with the debt. And the King hath commanded, that sheriffs and other aforesaid, shall from henceforth lawfully acquit the debtors at the next accompt after they have received such debts; and then the debt shall be allowed in the Exchequer, so that it shall no more come in the summons; and if the sheriff otherwise do, and thereof be attainted, he shall pay to the plaintiff thrice as much as he hath received, and shall make fine at the King's pleasure. And let every sheriff take heed, that he have such a receiver, for whom he will answer, for the King will be recompensed of all, of the sheriffs and their heirs. And if any other, that is answerable to the Exchequer by his own hands so do, he shall render thrice so much to the plaintiff, and make fine in like manner. And that the sheriffs shall make tallies to all such as have paid their debt to the King; and that the summons of the Exchequer be shewed to all debtors that demand a sight thereof, without denying to any, and that without taking any reward, and without giving any thing; and he that doth contrary, the King shall punish him grievously.'

A sheriff having received the King's debt, shall discharge the debtor.

Process for levying of the king's debt shall be shewed to the debtor.

[No. VII.] 10 Edward I. (the Statute of Rutland.)—Touching the Recovery of the King's Debts.

10 Edward I.

"THE King to his treasurer and barons of the Exchequer, greeting."

'To the intent that provision may be had for the indemnity of us and our people, in certain things touching us and our people aforesaid, in our said Court of Exchequer, we will and provide, That from henceforth the bodies of shires shall not be written in several rolls, but shall be written in a certain annual roll by themselves, and shall be ready every year upon the accompts of sheriffs, that is to wit, in several counties, that it may be known if ought may accrue unto us by any mean. The remanents of the ferms of the same shires* *shall be written* post terras datas *in the annual rolls*, and the sheriffs shall be charged therewith; in which remnants the liveries and alms assigned shall be allowed, and other allowances (if sheriffs have had any) of the issues of their bailiwicks by our writs. And because of the suggestion of our bailiffs, our writs are made of divers allowances, unto our grievous damage, we will and provide, That of such manner allowances so to be made, from henceforth view shall be made in our Exchequer; and the same view being faithfully made, the same treasurer and barons shall certify our chancellor of the due allowances so to be made, and that writs of allowances shall be made according to the same certificate. Moreover, there shall be written in the same annual rolls the ferms of the sheriffs, the profits of counties, the ferms of serjeanties and asserts, the ferms of cities, boroughs, towns, and other ferms, whereof there is answer made yearly in the Exchequer. And in them also shall be written all debts determined, all gross debts, whereof there is hope that somewhat shall be paid, and all other debts that seem to be clear; but when it is come unto accompt to the title of new duties, nothing shall be written in the annual roll, but those debts whereof there is hope of payment, and whereof the sheriff is answerable, and debts found in the originals, which seem to be clear.

The bodies of shires.

Annual rolls.

[* Qu. shall be written in annual rolls of subsequent dates.]

'II. Of dead ferms, and debts desperate, whereof there is no hope, one roll shall be made, and shall be inrolled, and read every year upon

A roll of desperate debts.

No. VII.
10 Edward I.

'the accompt of sheriffs; and the debts whereof the sheriffs are 'answerable shall be written in the annual roll, and there shall be 'acquitted.

Tallies for debts.

'III. Moreover, we will and provide, That it shall be proclaimed in 'every county, that all they that have tallies of the Exchequer, for the 'debts of themselves or their ancestors, hitherto paid usually there, and 'not yet allowed, which yet do come in the summons of the Exchequer, 'they do deliver to the sheriffs such tallies, to be allowed at the Exche-'quer upon their accompts. And the sheriffs shall make to them (of 'whom they shall so receive tallies) their writings, witnessing the 'receipt of those tallies, and occasion of the debts.

Two knights.

'IV. Two faithful knights, deputed thereunto, shall be present at 'the receipt of the tallies aforesaid, between whom and the said sheriffs 'indentures shall be made of such receipts, with the seals of them both 'interchangeably.

'V. The foresaid knights, deputed thereunto, shall send the parts of 'their indentures, at the term appointed, unto the Exchequer in form 'aforesaid; to the end, that by the view and witness of them, the said 'tallies so received by the sheriffs, may be shewed and allowed upon 'their accompts.

Having tallies and not delivering them.

'VI. Moreover, it shall be proclaimed, That except those that have 'such tallies do deliver them to the sheriffs and knights, as afore is said, 'that then they shall be distrained for the whole debt, and that the 'foresaid tallies shall be reputed for unpaid.

'VII. Moreover, the debts which yet are to come in the summons of 'the Exchequer, whereof the debtors do proffer tallies against divers 'sheriffs, shall be defalked and acquitted.

Commissions to inquire of the King's debts.

'VIII. Moreover we provide, That certain persons assigned thereunto 'on our behalf, shall be sent into every shire, which shall have full 'power to enquire of such manner of debts; and also to call afore them 'solemnly, as well the sheriffs, as their heirs and assigns, and the tenants 'of their lands, in case they be dead that have received the debts; and 'also, if need be, to proceed to the taking of such manner of inquests, 'whether the parties (against whom the foresaid tallies were shewed) do 'come or not; so that the sheriff do return a reasonable summons made 'to them therefore; and so the truth being inquired and discussed in 'presence of the parties (if they will be there) the inquisitors shall make 'rolls of them that shall be convict afore them; so that the foresaid 'debts being confessed and inrolled, the tallies of the same shall be 'forthwith broken. And the sheriffs shall have in their custody the 'transcripts of the same rolls, under the seals of the inquisitors; and 'shall surcease in making distresses for the debts contained in the same, 'until they shall have otherwise in commandment from us therefore. 'And the foresaid inquisitors shall send unto the Exchequer the foresaid 'rolls under their seals, that it may be examined there, by a search to 'be made therefore, what debts be paid in the whole, and what are paid 'in part, and what debts there be, whereof the debtors be not acquitted, 'according as shall be convenient to be done.

Tallies of dividends.

'IX. Moreover, we will and provide, That the chamberlains from 'henceforth shall not make to the sheriffs, or any of their bailiffs, 'tallies of *dividendis*, unless they first receive of them writings con-'taining the particular sums and occasions of debts, and the names 'of them that paid them*, *unto the which particulars he may part 'the names of such manner dividendis*; which being so received under 'their seals, it shall not be lawful to number them into other par-'ticulars.

[* Qu. And into what parcels they would have such dividends distributed.]

The sheriff returneth that the debtor is not found, or hath nothing.

'X. Moreover, we provide, That all debts, whereunto the sheriffs 'make return, that the debtors have nothing in their bailiwicks, ne had 'not at such time as they were charged with the same debts, or that the 'debtors be not found, that the same debts shall be estreated in rolls, 'and the same rolls to be delivered unto faithful and circumspect men, 'which shall make inquiry thereof after such form as shall be provided 'by the treasurer and barons.

No. VII. 10 Edward I.

No suit shall be prosecuted in the Exchequer, unless it concern the King, or his officers there.

'XI. But for so much as certain pleas were heretofore holden in the 'Exchequer, which did not concern us nor our ministers of the Exche- 'quer, whereby as well our pleas, as the causes of our people, are 'unduly prorogued and letted; we will and ordain, That no plea shall 'be holden or pleaded in the Exchequer aforesaid, unless it do specially 'concern us and our ministers aforesaid. And therefore we command, 'That ye cause the premisses to be distinctly and openly read afore 'you, and to inroll it, causing the same to be straitly observed in our 'Court of Exchequer aforesaid. In witness of which, &c. Yeven at '*Rutland* the four and twentieth day of the month of *May*, in the tenth 'year of our reign.'

[No. VIII.] 28 Edward I. stat. 3. c. 12.—What Distress shall be taken for the King's Debt, and how it shall be used.

28 Edward I. st. 3. c. 12.

'FROM henceforth the King will, that such distresses as are to be 'taken for his debts shall not be made upon beasts of the plough, 'so long as a man may find any other, upon the same pain that is else- 'where ordained by statute, &c. And he will not that over great dis- 'tresses shall be taken for his debts, nor driven too far; and if the 'debtor can find able and convenient surety until a day before the day 'limited to the sheriff, within which a man may purchase remedy or 'agree for the demand, the distress shall be released in the mean time; 'and he that otherwise doth, shall be grievously punished.'

[No. IX.] 1 Richard II. c. 5.—The Punishment of a Clerk of the Exchequer making Process for a Debt paid.

1 Richard II. c. 5.

'ITEM it is ordained, That all statutes and ordinances made before 'this time of officers of the exchequer, be holden and firmly kept 'in all points. And moreover it is ordained and established, That at 'what time any debts be once paid, and the tallies thereof made, re- 'joined, and allowed in the said exchequer, that this debt shall never 'come in demand. And if it so happen, that after such allowance 'made there, any clerk of the Exchequer make any writ or process to 'levy the same debt of new, and that duly proved, the same clerk shall 'lose his office, and have imprisonment till he hath made gree to the 'party by so much as he is endamaged, if any will sue, by the discre- 'tion of the treasurer and the barons of the Exchequer.'

[No. X.] 33 Henry VIII. c. 39.—The Erection of the Court of Surveyors of the King's Lands, the Names of the Officers there, and their Authority.

33 Henry VIII. c. 39.

THE Court of the General Surveyors of the King's Lands shall be a Court of Record, and shall have a Privy Seal, of which Court shall be Officers, the King's General Surveyors, a Treasurer, *viz.*, the Treasurer of the King's Chamber for the Time being, an Attorney, the Master of the Woods, Auditors, Receivers, a Clerk of the Court, an Usher, a Messenger; their several Oaths, Duties, and Authorities. All Lands only mentioned in a Schedule, signed or to be signed with the King's Sign manual, shall be in Order and Governance of the said Court.

Altered 1 M. sess. 2. c. 10.

'L. 'AND where divers and sundry obligations and specialties hereto- 'fore have been made to divers persons, part of them to the use 'of King *Henry* the Seventh, father of our now most gracious Sovereign 'Lord, and part of them to the use and behoof of our said now Sove-

No. X. 33 H. VIII. c. 39.

'reign Lord;' Be it enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That all obligations and specialties, which after the first day of *May* next coming, shall be made for any cause or causes touching or in any wise concerning the King's most Royal Majesty, or his heirs, or to his or their use, commodity or behoof, shall be made to his Highness, and to his heirs, kings, in his or their name or names, by these words, *Domino Regi*, and to none other person or persons to his use, and to be paid to his Highness by these words, *Solvend' eidem Domino Regi, hæred' vel executoribus suis*, with other words used and accustomed in common obligations; and that all such obligations and specialties so to be made shall be good and effectual in the law to all purposes and intents, and shall be of the same nature, kind, quality, force and effect to all intents and purposes, as the writings obligatory taken and knowledged according to the statute of the staple at *Westminster* hath at any time before the making of this present Act been taken, used, exercised, and executed against any lay person or persons; any law, usage, or custom, to the contrary thereof notwithstanding.

Obligations made to the King shall be in the nature of a statute staple, and shall be made Domino Regi, &c.

LI. And that all such obligations and specialties, the debt whereof not being paid nor contented in the life of the King, shall come, remain, and be to the heirs or executors of the King, at the free liberty, disposition, assignment, and appointment of the same King, to whom such obligations or specialties shall be made as is aforesaid. And if any person or persons, in his or their own proper person or persons, after the said first day of *May*, make or take any obligation or obligations to the use of the King's Majesty, or of his heirs, Kings, otherwise than is before expressed; that then such person or persons only, that shall so offend contrary to this present Act, for his or their so doing shall have and suffer such imprisonment, as shall be assessed and adjudged by the King, or his most honourable council daily attendant upon his Highness' most Royal person.

Who shall have the King's specialties after his death.

LII. And that all suits to be made after the first day of *April* next coming for the recovery of or for any the King's debts, in any of the King's courts mentioned in this Act, of or upon any obligation or specialty dated or delivered before the making of this present Act, or which shall be dated and delivered to the King, or to his use, afore the second day of *May* next coming, shall be taken, sued, and pursued in the name of the King, and in the name of none other person or persons, to whatsoever person or persons the said obligations or specialties, or any of them be, have been, or shall be made to the King's use.

All suits for the King's debts to be in his own name.

LIII. And that all suits, process, judgments, decrees, and executions hereafter to be taken, pursued, or given for the King in any the King's courts mentioned in this Act, of or upon any of the same obligations last afore mentioned, shall be of the same or like strength, force, effect and intent in the law to all purposes, only against all and all manner such person and persons as been bound in such obligations or specialties, as well spiritual as temporal, as against their heirs, successors, executors and administrators, and every of them, and against none other, as writings obligatory taken and acknowledged according to the statute of the staple at *Westminster*, at any time before the making of this present Act, have been used to be taken, exercised, and executed against any lay person or persons.

Process, judgment and execution for the King to be in the nature of the statute staple.

LIV. And that the King in all suits hereafter to be taken in or upon any obligations or specialties made or hereafter to be made to the King, or any to his use, shall have and recover his just debts, costs and damages, as other common persons use to do in suits and pursuits for their debts. And that all such suits as now be depending in the name of any common person to his Grace's use, whereof no verdict is, or before the feast of *Easter* next coming shall be given or passed, or no *exigent* awarded, shall abate, be void, and of none effect; and nevertheless the King, by the authority aforesaid, shall have his suit and remedy for the

The King in all suits for debt shall recover his costs and damages.

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said debt so being in action and process, in form as is aforesaid, in any of the courts in this Act mentioned; any thing in this Act to the contrary thereof notwithstanding.

Suits for the King's debts shall be in the courts where they shall be due.

LV. And it is further enacted by the authority aforesaid, That all and every suit and suits, which hereafter shall be had, made, or taken of, for or upon any debt or duties, which heretofore hath grown or been due, or that hereafter shall grow or be due to the King, in the several offices and Courts of his Exchequer, duchy of Lancaster, augmentations of the revenues of his crown, surveyors general of his manors, lands and tenements, master of the wards and liveries, and court of the first-fruits and tenths, or in any of them, or by reason or authority of any of them, shall be severally sued in such one of the said courts and offices, in the which court and office, or by reason of the which court and office, the same debt or duty did first grow or become to be due, or hereafter shall grow or become due, or in the which office or court the recognisance, obligation, or specialty is or shall be or remain. And every such several suit and suits shall be made in every of the said several offices and courts, under the several seals of the said several courts, by *capias*, *extendi facias*, *subpœna*, attachments and proclamations of allegiance, if need shall require, or any of them, or otherwise, as unto the said several courts shall be thought by their discretions expedient for the speedy recovery of the King's debts.

Process that shall be awarded in the said several courts for the recovery of the King's Debts.

LVI. And that the said Court of Exchequer, and all and every of the said courts, shall have whole and full authority and power to hear and determine all and every such suit and suits as hereafter shall be taken, commenced and pursued for the intent above specified, and thereupon to award, make and do execution by and upon the body, lands and goods of the party or parties that shall be so condemned accordingly.

The authority of the Courts of Exchequer, wards and duchy.

LVII. And also shall have full power and authority to hear and determine all and all manner of debts, detinues, trespasses, accompts, reckonings, wastes, deceits, negligences, defaults, contempts, complaints, riots, quarrels, suits, strifes, controversies, forfeitures, offences, and other things, whatsoever they shall be, which hereafter shall grow, be moved, stirred, procured, pursued or arise, in, for or upon any matter, cause or other thing assigned, committed or appointed, or hereafter to be assigned, committed or appointed to the several directions, orders and governances of the same courts, or any of them, or for or upon any manner of thing or things which may or shall touch, or in any ways concern the same, wherein the King shall be only party; and also all manner of states for term of years between party and party concerning the premises; and to correct and punish by their discretions all and every person and persons, which before them shall be convicted of any of the premisses, according to the nature, quality and quantity of his or their offence or offences, cause or causes, matter or matters, all and all manner of treasons, murders, felonies, estates, rights, titles and interests, as well of inheritance as of freehold, other than jointures for term of life only excepted and always reserved.

Title pretended to lands sold or exchanged by the King.

LVIII. And be it enacted by the authority aforesaid, That if any person or persons shall make or pretend any claim, right, title, interest or possession in or to any manors, lands, tenements or hereditaments, bargained, sold or exchanged, or hereafter to be bargained, sold or exchanged by the King our Sovereign Lord, to any person or persons in fee-simple or fee-tail, by his Highness' letters patents, made or to be made thereof under the great seal of *England*, upon which letters patents there is or shall be reserved any annual rents or farms payable to the King's Highness, his heirs or successors, in his said court of augmentations; or demand or ask any rents, annuities, offices, fees or other profits, in, out, or of any such manors, lands, tenements, or hereditaments, contained or to be comprised in any such letters patents, made or hereafter to be made, as is aforesaid: Or if our said Sovereign Lord, his heirs or successors, shall make or pretend any claim, right, title, in-

The King pretending title to any lands by

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terest, or possession in or to any manors, lands, tenements, or hereditaments bargained, sold or exchanged, or to be bargained, sold or exchanged by the King, his heirs or successors, to any person or persons in fee-simple or fee-tail, by his or their letters patents thereof made, or hereafter to be made, under his or their great seal of *England*, upon which letters patents is or shall be reserved any annual rents or farms, payable or which shall be payable to the King, his heirs or successors, in his said court of augmentations; or if the King, his heirs or successors, demand or ask any rents, annuities or other profits or hereditaments of any estate of inheritance in, of, or out of any manors, lands, tenements or hereditaments contained or comprised, or to be contained or comprised, appointed or to be appointed or assigned to the said court of augmentations, in any letters patents made, or hereafter to be made as is aforesaid; that then the chancellor of the said court of augmentations, by the assent of the council of the said court, or the more part of them, shall have power and authority, by authority of this Act, to examine all such demands, rights, titles, interests and possessions, rents, annuities, offices, fees, and other profits and hereditaments, whatsoever they shall be, and every of them so to be demanded, pretended, claimed or asked as is aforesaid, and by witness, proofs and other ways and means by their discretions, to hear and determine the same. And in case the King's patentees in any such letters patents as is aforesaid, or any of them, their heirs, successors or assigns, shall be compelled by the authority of the said court of augmentations, by decree or judgment of the same court, to render and yield to any person or persons, in fee-simple or fee-tail, the lands, tenements or hereditaments comprised or specified in any such letters patents, or any parcel of them, or to suffer any person or persons to have and enjoy any offices, rents, annuities, or other profits or hereditaments in fee-simple or in fee-tail, out or of the same, or out of any parcel thereof; and that it shall appear in the said letters patents, that the King, his heirs or successors, is or shall be bounden, or of right and equity ought to recompense and satisfy the said patentees, their heirs, successors, executors, or assigns, or any of them, of and for such manors, lands, tenements, or hereditaments, annuities, rents, offices, fees, or other profits recovered in fee-simple or fee-tail, by decree or judgment of the said court as is aforesaid, or else to discharge and acquit the said patentees, their heirs, successors, executors and assigns, of or for any rents, annuities, offices, fees, or other profits aforesaid, recovered by decree or judgment in fee-simple or fee-tail as is abovesaid: Or if it shall appear unto the said court of augmentations, or unto the more part of them, that the King, his heirs or successors, of right and equity, ought to have, recover, or enjoy in fee-simple or fee-tail, any manors, lands, tenements or hereditaments, in any such letters patents comprised, or rents, annuities, offices, fees or other profits, in, out or of the same; that then, in all and every such case and cases, the said chancellor of the augmentations for the time being, with the assent of three or more such persons as hereafter shall be named by the King, his heirs or successors, shall have full power and authority, without any bill or warrant to be signed or sued from the King, his heirs or successors, for the same, as well to recompense and satisfy the party or parties grieved, so much in money of the King's treasure remaining in the said court of augmentations, as the said manors, lands, tenements, rents, annuities, offices, fees, or other profits or hereditaments lost or recovered by decree or judgment of the said court of augmentations as is aforesaid, shall be worth to be sold, or otherwise discharge and acquit such person or persons thereof, according to his or their letters patents; as also to make and take order, direction, decree and judgment for the King, his heirs and successors, for the recovery, attaining and having of all and singular such manors, lands, tenements, rents, annuities, offices, fees, profits and hereditaments, and all and every other thing and things, which the King, his heirs

him sold or exchanged.

The King demanding rents or profits out of such lands.

In what causes the court of augmentations, without other warrant, may make recompence to any person that is wronged.

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and successors, by and upon such examination and examinations) ought, should and shall be justly intitled to have, recover, possess, or enjoy in fee-simple or fee-tail; and the same decree, direction, order and judgment to be good and effectual in the law, to bind all parties and privies to the same to all intents and purposes. And where any decree or judgment, which shall be given in the said court of augmentations for any the premises, extend to the loss of the King's patentee or patentees, their heirs, successors, executors, or administrators, but for term of life or lives of the demandant or demandants, plaintiff or plaintiffs, or for term of years, the loss whereof the King is bounden and ought to recompense, discharge, or acquit by his letters patents; then the said chancellor of the augmentations shall have full power and authority to recompense or discharge the same in money as is aforesaid, or else to recompense the same of the lands, tenements, hereditaments and possessions limited to the survey and governance of the said court of augmentations, to be granted under the seal of the same court by the discretion of the said chancellor, as shall seem to him best for the King's profit, without any bill or warrant to be sued or signed by or from the King for the same. And that every such recompence, satisfaction and discharge to be made by authority of this Act to any person or persons by the said chancellor as is aforesaid, shall be good and effectual against the King, his heirs and successors; any law, usage or custom to the contrary thereof notwithstanding.

A loss extending by a decree to the King's patentee for life or years, how to be made good.

The courts erected by this Act were united to the Exchequer, pursuant to the powers granted by 1 M. stat. 2. c. 10.

LIX. And it is further enacted by the authority aforesaid, That every of the said courts shall have full power and authority by force of this Act, to set such fines, penalties and amerciaments upon parties, sheriffs, officers, and other persons, for his and their defaults, contempts, negligences or misdemeanors, as unto the said courts, or unto any of them, shall be reasonably considered and thought expedient; and that all and every trial and trials, of all and all manner of suits, bills, plaints, informations, declarations, complaints, answers, replications, allegations, causes, matters and issues, or any of them, to be pursued, made, or tried in the said several courts, or any of them, shall be made and tried by due examination of witness, writing, proofs, or by such other ways or means as by the said several courts, or by any of them, shall be thought expedient; and that all and every such judgment and judgments, decree or decrees, examination and examinations shall be good, perfect, and in full strength, force and effect in the law to all intents, constructions and purposes.

The authority of the aforesaid courts to set fines, &c. upon offenders.

Trials in the said courts.

The chief officers of the said courts may discharge recognizances taken there.

'LX. And where divers and sundry persons stand bounden to the 'King's Highness in divers great and notable sums of money, by re- 'cognizance or other bonds in the said several courts, for debts due to 'the King's Highness, as well for the purchase of lands and woods, and 'performance of conditions, as also for divers and sundry other causes: 'And albeit the same persons have well and truly satisfied, contented, 'and paid the same debts, or performed the conditions of the same re- 'cognizances, or other bonds, yet the same recognizances or other 'bonds cannot be made void without the King's especial warrant, which 'should be much unquietness to the King's Majesty; and also very 'chargeable to his Grace's subjects to sue to his Highness from time to 'time for the same: In consideration whereof, and forasmuch as the 'said persons being so bounden by recognizance or in other bonds, may 'by divers casualties lose their acquittances, whereby great danger 'and peril may grow to them, their heirs, executors and successors:' Be it therefore enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That upon the sight of the acquittances made or to be made for the payment of the said debt or debts, or sum or sums of money growen or to be growen, or due, and sufficient proof made, or hereafter to be made, before the said several head officers for the time being of the said several courts, as the case shall rise or grow, or if the condition of the same recognizance or bond be performed or kept; that then every such several head

officer for that recognizance taken, or to be taken by him or any of his predecessors, or of any other bond for that time being within his charge and cure, shall have full power and authority to cancel and make void the said recognizance or other bond, calling to him such of the same court as to him or them shall seem most convenient for the cancellation of the same recognizance or bond. No. X. 33 H. VIII. c. 39.

LXI. And be it enacted by the authority aforesaid, That the same cancellation so made shall be a sure and sufficient discharge of the same recognizance or other bond, to all and every such person or persons, as do or shall stand bounden in the same recognizance or bond so cancelled, against the King's Highness, his heirs, executors and successors for ever.

LXII. And be it further enacted by the authority aforesaid, That the same several head officers for the time being, in every of their said several courts, shall have full power and authority to discharge, cancel or make void, by his or their discretion, all and singular recognizances now made, or hereafter to be made in the said court, for any appearance or other contempt; and that the same head officer or officers, and the parties so bounden and to be bounden, to be discharged against the King our Sovereign Lord, his heirs, executors, and successors, for the cancellation of the same recognizance. Discharging of recognizances taken for appearance or contempt.

'LXIII. And where the King's Majesty sithen the making of the same 27 H. 8. c. 27.
'statute in the said twenty-seventh year of his noble reign, of his own
'meer motion, liberality and benignity, hath freely given and granted
'by his sundry letters patents under his Great Seal of *England*, unto
'divers and sundry of the nobles and lords, as well spiritual as temporal,
'of this his realm, and also unto divers and many other persons and
'bodies politic, to their heirs or successors, and to the heirs of their
'bodies, or for term of life or lives, divers and many sundry honours,
'castles, manors, lands, tenements, rectories, pensions, portions, and
'other hereditaments, which then were in the order governance and
'survey of the same court of the augmentations of the revenues of his
'Grace's crown, or out of any other of the said several courts, reserving
'unto his Majesty, his heirs and successors, by the same letters patents,
'one yearly rent in the name of one tenth, or the tenth part of the
'yearly value of the same premises, or any other tenth payable and to
'be paid in the same courts, or to the officers of the same courts de-
'puted and assigned for the same, at one certain feast or day in the
'same letters patents mentioned and declared; which said persons so ad-
'vanced, notwithstanding they have sithen and after the making of the
'same letters patents peaceably enjoyed the same manors, lands, tene-
'ments and hereditaments so given, and thereof have quietly perceived
'and taken the issues, revenues and profits thereof; yet nevertheless
'divers of the same persons have not, at the days and feasts assigned and
'limited unto them in the same letters patents, nor yet in long time
'after the same days and feasts of payment thereof, contented and paid
'in the same courts, or to the officers of the same courts assigned and
'deputed for the same, the said yearly rent or rents so reserved to the
'King's highness, contrary to their duties, and against all reason and
'good conscience:' In consideration whereof be it therefore now ordained, enacted and established by the assent of the King's Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person of what estate, degree or condition soever he be, or body politic, to whom the King's Majesty hath by his letters patents under his Great Seal of *England*, or under the great seal of the same court of augmentations, given or granted, or hereafter shall give or grant, with like reservation of rent or rents, any manors, lands, tenements, rectories, or other hereditaments whatsoever, which were or hereafter shall be in the order, governance and survey of the same courts, or any of them, to be had to them and their heirs or successors, or for any other estate of inheritance, or for term of life or lives, yielding and reserving to the same our said sovereign Lord the King, his heirs or successors, one yearly rent at one

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A remedy for tithes not paid issuing forth of abbey lands given by the King to others.

certain day or feast in the same letters patents expressed, mentioned and declared, and to be paid into the same courts; that if the same persons, bodies politic, their heirs or successors, or assigns, or any of them, do not truly content or pay, or cause to be contented or paid unto the treasurer of the said several courts, or to the general or particular receiver of the same several courts, deputed and assigned for the same for the time being, to the use of the King's Highness, at the day or feast limited by the same letters patents, or within three months next and immediately after the same day or feast of payment thereof, all such sums of money, which been or hereafter shall be due, reserved to the King's Majesty, his heirs and successors, by the same letters patents, or by any of them, or make sufficient tender thereof to the said treasurer, or general or particular receiver; that then every of the same persons, bodies politic, their heirs, successors or assigns, for lack and default of payment of the same rent, to forfeit and lose to the King's Majesty, his heirs and successors, as much money as the fourth part of the same rent so reserved, or hereafter to be reserved for one year, doth or shall amount unto, for and in the name of one pain, over and above the same rent reserved, or hereafter to be reserved. And if it happen the same persons, or bodies politic, their heirs, successors or assigns, or any of them, do not, within one half year next after the day or feast expressed in the same letters patents, content or pay, or lawfully tender unto the same treasurer, or general and particular receiver, to the use of the King's Majesty, his heirs or successors, as well the said yearly rent so reserved, or hereafter to be reserved, as also the said money forfeited for and in the name of a pain; that then the same persons, bodies politic, their heirs, successors or assigns, so offending, shall forfeit and lose to the King's Majesty, his heirs and successors, so much money as the moiety or half deal of the same rent reserved or to be reserved for one year doth or shall amount unto, over and above the said rent reserved or to be reserved; and so to forfeit and lose for every half year after so much money as the whole rent reserved or to be reserved for one whole year doth or shall amount unto, until the same rent so reserved or to be reserved, and the arrearages of the same, and also the said sums of money so forfeited and lost for a pain, been unto the same treasurer, or general or particular receiver, truly satisfied, contented and paid, to the use of the King's Highness, his heirs and successors.

The penalty for default of payment at the day assigned, or within three months after.

The penalty for default of payment within a year.

A further remedy for the tenth, and money forfeited in the name of a penalty.

LXIV. And be it also enacted by the authority aforesaid, That it shall be lawful to the same treasurer, and general or particular receiver, to distrain as well for the same rent so reserved or to be reserved, and for the arrearages of the same, as also for the said sums of money, so forfeited, or to be forfeited and lost, for and in the name of the pain aforesaid: And also the head officer or officers of either of the same courts for the time being, upon certificate to him made or to be made of the same default and contempt, shall and may award such process out of the same courts against the same offender for not paying of the said rent so reserved or to be reserved, and also for the same sums of money forfeited and to be forfeited by this Act, as by his or their discretion shall seem convenient.

A acquittance for the tenth.

LXV. And be it also enacted by the authority aforesaid, That if any person or persons hereafter make lawful payment to any of the said treasurers, or general or particular receivers of any of the same courts, deputed and assigned for the same, of any sum or sums of money due to the King's Highness, his heirs or successors, for any yearly rent or tenth, and upon or after such payment offer unto the same treasurer, or general or particular receiver, one lawful and sufficient acquittance ready made, to be assigned by the same treasurer, or general or particular receiver, witnessing the receipt of the said sum or sums of money so paid; that then the said treasurer, general or particular receiver, shall with his own hand assign the same acquittance without taking any fee or reward for the making of the same acquittance, upon pain to forfeit and lose for every time offending contrary to this Act, forty shillings; one moiety whereof to be to the King's Highness, and the other moiety

to the party that will pursue for the same; and if the parties which hereafter shall happen to pay to the same treasurer, or general or particular receiver, any such sum or sums of money, and do not bring an acquittance with him to be assigned, as is beforesaid; that then if the same treasurer, or general or particular receiver, upon request to him made, shall make and deliver unto the same party one sufficient acquittance, testifying the same receipt, that then the same treasurer, or general or particular receiver, or any of his clerks, shall receive or take of the same party for the making of the said acquittance, not above four-pence, upon pain to forfeit for every such acquittance twenty shillings, for which he or they shall happen to take above the said sum of four-pence, to be recovered as is beforesaid, that is to say, the one moiety thereof to the use of the King's Highness, his heirs and successors, and the other moiety thereof to the party that will pursue for the same.

LXVI. And be it also enacted, That the same acquittance shall be a sufficient discharge according to the tenor and effect of the same.

How much he shall pay for an acquittance which dotff receive any annuity.

LXVII. And be it also further enacted and ordained by the authority aforesaid, That if any of the same general or particular receivers, which now be or hereafter shall be within any of the said courts, happen to pay to any person or persons any annuity, pension, or other rent, that then if the same person or persons, upon the receipt thereof, deliver unto the same general or particular receiver one sufficient and lawful acquittance sealed and signed, testifying the same receipt, that then the same general or particular receiver shall receive the same acquittance, without taking or receiving any fee or reward for the making of the same; and if the same party to whom the said general or particular receiver have so contented and paid any such annuity, pension or rent, do not bring with him one sufficient acquittance signed and sealed, testifying the receipt of the same money, by reason whereof the same general or particular receiver, by himself or his clerk, maketh one acquittance for the receipt of the same annuity, pension or rent, that then the same receiver or his clerk shall not receive or take for the making of such acquittance, which he shall so happen to make, above four-pence, upon pain to forfeit for every such acquittance which he shall happen to refuse, being ready made and offered to be delivered to him, as is abovesaid, twenty shillings; and for every acquittance which he shall hereafter happen to make for any the payments aforesaid, and to receive for the making of the same acquittance above the sum of four-pence, to forfeit twenty shillings; the one moiety to the King, and the other to the party that will sue for the same; and also that the same general or particular receiver, or their deputies, which hereafter shall happen to pay any such annuity, pension or rent, shall not retain or take of the party to whom he shall happen to pay the same, in the way of reward or otherwise, not above the sum of four-pence for every pound which the same general or particular receiver shall so happen to pay, upon pain to forfeit *vi. s. viii. d.* for every penny which he or they shall happen to receive above the said sum of four-pence, for every pound which he or they shall so happen to pay; the one moiety of the said forfeiture to be to the King, and the other moiety to the party that will sue for the same; and that all the said suits concerning the said forfeitures may be commenced and pursued by bill, information or action, in which suit none essoin, protection or wager of law to be admitted.

The receiver shall take but iv.d. a pound.

The auditor's fees for inrolments.

LXVIII. And be it further enacted, That if any person or persons hereafter happen to tender or offer unto any of the auditors of the same several courts, for the time being, any of the King's letters patents, decrees of any of the same several courts, grants, indentures of leases, as well for term of years as for term of life or lives to be inrolled before the same auditor, according to his office; that then the same auditor, upon the same tender or offer, shall inroll the same, or as much of the same letters patents, decrees, grants or indentures, as shall appertain to his said office; and if any of the same auditors,

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or any of their clerks, or any other to their use, or to the use of any of them, receive and take for the enrolment of any of the same letters patents, decrees, grants or indentures, or for the allowance of the same, above the sum of three shillings four-pence, that then the same auditor, or his clerk, so offending, shall forfeit six shillings eight-pence for every penny which the same auditors, or any of them, shall happen at any time hereafter to receive contrary to the form aforesaid; the one moiety of the same forfeiture to be to the King's Highness, and the other moiety to him that will sue for same by such manner and form as is aforesaid.

Auditors shall cause proclamation to be made in four market-towns twenty days before their coming.

LXIX. And be it also further enacted by the authority aforesaid, That every auditor of every the said several courts, yearly in every county within their said several limits, by the space of twenty days or more before their audit, shall proclaim and declare in four several markets or other places, the place and days where and when they will keep their several audits in the same shire, upon pain to forfeit for every time doing the contrary five pounds, the one moiety whereof to be to the King's Highness, and the other moiety to the party that will sue for the same in form aforesaid.

Auditors and receivers shall make their precepts to bailiffs, &c.

LXX. And that also every of the auditors of the said several courts, being severally assigned to their several limits, and every the particular receivers of the same several courts, being also severally assigned and joined with the same several auditors in their said several limits, after and between every of the feasts of St. *Michael* the Archangel and *Christmas*, shall direct and award their several warrants and precepts under their seals to every of the receivers, bailiffs, reeves and other officers whatsoever accountable before the same auditors, and by the same warrant or precept to charge and command, in the name of our said Sovereign Lord the King, every of the said receivers, bailiffs, reeves, and other officers, to appear before them at one certain day and place in the same warrant or precept to them prescribed, there to declare and make a just and true accompt of all such receipts whereof they be accountable and owe to account.

A remedy against accomptants which make default of appearance or payment.

LXXI. And after if the same auditors and particular receivers do repair unto the same place, and there keep their audit according to the same proclamations, precept and warrant; that then if any receiver, bailiff, reeve or other officer, being accomptable of or for any of the manors, lands, tenements or other whatsoever hereditaments now remaining, or which hereafter shall be and remain in the order, governance or survey of any of the same several courts, be lawfully warned, as well by the same proclamation, or by precept or warrant in writing sealed, and in the name of any of the auditors of the said several courts personally to appear by himself, or by his sufficient and lawful deputy, before the same auditor and receiver, at one certain day or place in the said warrant or precept prescribed, there to make and declare a just and true accompt of all receipts of his said office: And if the same receiver, reeve, bailiff and other officer, so being lawfully warned, do not appear before the same auditor and receiver at the same day and place in the said warrant expressed; or if the same receiver, bailiff, reeve or officer do, at the same day and place to them prescribed, appear, and will not accompt before the same auditor, according to the tenor and effect of the same precept and warrant; or if the same receiver, bailiff, reeve or other officer accomptable, do by himself, or by his sufficient and lawful deputy, appear before the same auditor and receiver, and then and there enter into his or their accompt before the said auditor, and after the same accompt finished and ended, if the same receiver, bailiff, reeve or other officer, do not content and pay unto the treasurer of the same several courts, or to the general or particular receiver of the same county for the time being, as the case shall require, within three weeks next and immediately after the same accompt fully finished and ended, all such sums of money, which upon the determination of his said accompt, he shall happen to be found in arrearages, and the same

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default and contempt being duly proved before the head officer and officers of the said several courts for the time being; that then every such receiver, bailiff, reeve or officer so offending, to forfeit and lose his said office, and also his fee which he or they had and received for the exercising of the same office.

The penalty if an accomptant do withdraw any rent.

LXXII. And be it also further enacted by the authority of this present Parliament, That if any of the said receivers, bailiffs, reeves or other officers, upon the declaration of their said accompts, do willingly conceal and withdraw any rent, revenue, fine, heriot or other casualty whatsoever it be, of the which he ought to have made accompt, and the same duly proved before the said head officer or officers for the time being; that then every such receiver, bailiff, reeve or officer so offending, to forfeit and lose his said office and fee which he had for the exercising of the same, and also three times as much as he hath so concealed and withdrawn: And that the said head officer or officers of the same several courts, for the time being, immediately upon certificate to him made of the same default, contempt or offence, shall award process in nature of attachment against the same receiver, bailiff, reeve or other officer, as well for the same arrearages remaining in the hands of the same receiver, bailiff, reeve or officer, as also for the penalty of their recognizance or bond, in which the same receiver, bailiff, reeve or officer standeth bounden to our said Sovereign Lord the King, as also for the contempt and pain limited and appointed by this Act.

A remedy for debts which grow to the King by attainder, oulawry, forfeiture, gift, &c.

LXXIII. And be it further enacted by authority aforesaid, That in all actions and suits to be taken or pursued in any the courts aforesaid, for the recovery of any debt or debts, which now be, or that hereafter shall happen to appertain, accrue, remain, or be to the King, by reason of any attainder, outlawry, forfeiture, gift of the party, or by any other collateral way or means, it shall be sufficient in the law to shew and allege in the said suit generally, that the party to whom the said debt or debts was or did belong, such year and day did give the same debt or debts unto the King, or was attainted, outlawed, or other offence, forfeiture, deed, act, or thing committed or done, by reason whereof the said debt or debts did accrue, and ought to remain, come, and be to the King. And that the same matter so to be shewed, alleged, or declared in a generality, without shewing and declaring the circumstances thereof, shall be of as good force and effect in the law to all intents, constructions and purposes, as if the whole matter thereof had been or were alleged and declared at large in every point, according to the due order of the common laws of this realm.

The King shall be preferred in suit and execution.

LXXIV. And be it also enacted by the authority aforesaid, That if any suit be commenced or taken, or any process be hereafter awarded for the King, for the recovery of any of the King's debts, that then the same suit and process shall be preferred before the suit of any person or persons: And that our said Sovereign Lord, his heirs and successors, shall have first execution against any defendant or defendants, of and for his said debts, before any other person or persons, so always that the King's said suit be taken and commenced, or process awarded for the said debt at the suit of our said Sovereign Lord the King, his heirs or successors, before judgment given for the said other person or persons.

Tenant in fee simple or tail to pay his ancestor's debts to the King.

LXXV. And be it enacted also by authority aforesaid, That all manors, lands, tenements, possessions and hereditaments, the which now be, or that hereafter shall come or be, in or to the lands, possession, occupation, or seisin of any person or persons, to whom the same manors, lands, tenements or hereditaments have heretofore or hereafter shall descend, revert or remain in fee simple or in fee tail general or special, by, from, or after the death of any his or their ancestor or ancestors as heir, or by gift of his ancestors whose heir he is, which said ancestor or ancestors was, is, or shall be indebted to the King, or to any other person or persons to his use, by judgment, recognizance, obligation, or other specialty, the debt whereof is or shall not be contented

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and paid; that then in every such case the same manors, lands, tenements, possessions and hereditaments, shall be and stand, by authority of this Act, from henceforth charged and chargeable to and for the payment of the same debt, and of every part thereof.

The King's debts payable by the heir, though in the bond he be not named.

LXXVI. And that our said Sovereign Lord, his heirs and successors, at any time hereafter shall not be barred, delayed, foreclosed, or excluded, to demand, have, and receive his or their just, due, and lawful debts and duties against any of his subjects, as heir or heirs to any person or persons indebted to his Highness, or to other persons to his use, or which shall be indebted to his Highness, his heirs or successors, albeit this word *heir* be not or shall not be comprised in such recognizance, obligation or specialty, or that any such person or persons shall say or allege, that he or they have not any manors, lands, tenements or hereditaments to them descended, but only such manors, lands, tenements or hereditaments, as be or shall be intailed or given to them by any their ancestors to whom they be heirs; any laws, uses or customs before this time used or had to the contrary notwithstanding.

Lands intailed chargeable.

The King may charge the executors or administrators.

LXXVII. Provided always, That the King's Majesty, his heirs and successors, may at his or their liberty and pleasure demand, have and recover his or their said debt or debts, of and against any executor or executors, administrator or administrators of any such person or persons, which is, hath been, or shall be indebted in manner and form abovesaid, if the same executor or executors, administrator or administrators, shall have assets in his or their hands, in deed or in law; any thing before mentioned to the contrary notwithstanding.

The lands chargeable to the King recovered.

LXXVIII. Provided also, That if the said manors, lands and hereditaments, or any of them, shall hereafter be recovered or evicted out of or from the possession of any such person or persons, by any just or former title, without fraud or covin, whose manors, lands, tenements or hereditaments have been or shall be charged or chargeable, as is abovesaid; that then all and every such manors, lands and hereditaments, shall be clearly acquitted and discharged of and for the payment of the same debts, and of every part thereof; any thing before mentioned to the contrary notwithstanding.

Sufficient matter pleaded in discharge of the debt.

LXXIX. Provided alway, and be it enacted by the authority aforesaid, That if any person or persons, of whom any such debt or duty is, or at any time hereafter shall be, demanded or required, allege, plead, declare or shew, in any of the said courts, good, perfect and sufficient cause and matter in law, reason or good conscience, in bar or discharge of the said debt or duty, or why such person or persons ought not to be charged or chargeable to or with the same: And the same cause or matter so alleged, pleaded, declared or shewed, sufficiently proved in such one of the said courts, as he or they shall be impleaded, sued, vexed, or troubled for the same; that then the said courts, and every of them, shall have full power and authority to accept, adjudge, and allow the same proof, and wholly and clearly to acquit and discharge all and every person or persons that shall be so impleaded, sued, vexed, or troubled for the same; any thing in this present Act before mentioned to the contrary notwithstanding.

Lands chargeable to the King in several men's tenures.

LXXX. Provided also, and be it enacted by the authority aforesaid, That if any manors, lands, tenements or hereditaments, which be, or at any time hereafter shall be charged or chargeable to or with the debt of our said Sovereign Lord, his heirs or successors, and be at any time hereafter or shall be in the seisin and possession of divers and sundry persons, other than the obligor or obligors, that then all and singular the said manors, lands, tenements and hereditaments, and every parcel of them, shall be wholly and entirely, and in no wise severally, liable and chargeable to and with the payment and payments of the said debt and duty; any thing before rehearsed to the contrary notwithstanding.

The liberties of the duchy of Lancaster saved.

LXXXI. Provided also, That this Act, nor any thing therein contained, shall in any wise extend to minish, abrogate, or take away, any realties, liberties, privileges, franchises, pre-eminences, jurisdictions,

fines, issues or amerciaments, appertaining or belonging to the said duchy of *Lancaster*, and county palatine of *Lancaster*, or any of them; but that the same liberties, realties, privileges, franchises, pre-eminences, jurisdictions, fines, issues and amerciaments, and every of them, shall still continue, remain, and be to the said duchy of *Lancaster* and county palatine, and to every of them, as fully, wholly and plenarily, as they were before the making of this present Act; any thing in the same contained to the contrary notwithstanding.

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LXXXII. Provided alway, and be it enacted by the authority aforesaid, That all manner of process, processes, and executions for debts, only coming and growing in the Court of the Exchequer, shall be made in the same Court of the Exchequer, by such officer and officers, clerk or minister of the same court, as hath been afore this time used to be made, after and with such kind of process, processes and executions, as by this Act is limited and declared; any thing in this Act contained to the contrary notwithstanding.

Process and executions for debts growing in the Exchequer.

[No. XI.] 2 and 3 Edward VI. c. 4.—An Act for the Sheriffs of *England* to have certain Allowances upon their Accompts.

I. [Sheriffs upon their accompts in the Exchequer, upon their Oath taken, shall be discharged of all such monies as they cannot levy, and shall have their due allowances.]

II. [The statute of 34 & 35 H. 8. c. 16. touching sheriffs, rehearsed and repealed.]

V. [Every sheriff shall have tallies of reward.]

VII. [Sheriffs' allowances that have no tallies of reward.]

IX. [Sheriffs' allowances for vicountiels and possessions come to the King's hands.]

X. [The sheriffs shall be sworn to bring into the Exchequer rolls of parchment of money which he hath or might have levied.—Process shall be awarded out of the Exchequer to enquire of the King's debts.]

XI. [Allowance made to commissioners for their costs.]

[No. XII.] 7 Edward VI. c. 1.—An Act for the true Answering of the King's Majesty's Revenues.

'FORASMUCH as the King's Majesty's treasurers, and general and particular receivers and bailiffs of his honours, castles, lordships, manors, lands and tenements, reversions, possessions and other his hereditaments in *England*, *Wales* and *Calice*, and the marches of the same, or elsewhere within the King's dominions, have not so justly, speedily, neither duly made yearly payments of such sum and sums of money as hath been by them and every of them received of the King's Majesty's revenues, possessions and profits, into the King's Majesty's treasury according to their duties, but yearly do detain and keep the same to their own gain, profit and lucre, contrary to all right, truth and equity, and to the manifest injury, wrong and hindrance of and to the King our Sovereign Lord:'

7 Edward VI. c. 1. Certain officers accomptable to the King shall be bound with sureties for their true accompt and payment.

II. Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That every treasurer and general and particular receiver, collector and bailiff, and other minister accomptant, which now is charged or chargeable with or for the receipt of any of the King's Majesty's money, rents or revenues whatsoever, not being bound with surety or sureties by obligation, recognizance or otherwise, to our late Sovereign Lord the King, or to our Sovereign Lord the King that now is, for or concerning their office or offices, before the twentieth day of *December* next com-

Every officer that now is accomptantto the King shall be bound for his true accompt and payment.

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ing, or at any time or times before the same twentieth day of *December*, if they or any of them be reasonably required, shall upon pain of forfeiture of his office be bound to the King's Majesty by sufficient writing obligatory in reasonable sum or sums of money: The same writing obligatory to be made with or upon condition, that the person which shall be so bounden, his heirs, executors, administrators, deputy or deputies, or one of them, from time to time shall yield a perfect and true accompt of all sums of money, and other things that the same treasurer and general and particular receiver, collector, bailiff or other minister accomptant, shall, may, or reasonably might be charged with, concerning, or by reason of his or their office or offices; And also shall make payments of the same sums of money at such days and times, and in such manner and form, as hereafter in this Act is expressed and declared.

Every officer to the King accomptant hereafter tobe named shall be bound with sureties for his true accompt and payment.

III. And be it further enacted, That all and every person and persons hereafter to be named, assigned or appointed to be treasurer or general or particular receiver, collector, or bailiff or minister accomptant of our said Sovereign Lord the King, shall before any their entry, executing, using or exercising of his or their office or offices whereunto he or they shall be so nominated or appointed, together with surety or sureties, acknowledge and make sufficient and lawful bond or bonds to the King's Majesty, in such court of record where the same officer or officers is or shall be accomptable and chargeable, that they, their heirs, executors, administrators, assigns or deputies, shall truly accompt and pay all such sums of money as shall come to their hands, or shall, may, or reasonably might be charged with concerning his or their office or offices to the King's use, within the circuits of their several receipts and collections, at such or like days and times, and in such manner and form as is abovesaid, to be contained in the conditions of every of the said bonds, upon pain of loss and forfeiture of his or their office or offices, and of his and their letters patents of the same office or offices.

Receivers precepts unto accomptants to make payment of their collections due to the King at Easter.

IV. Be it further enacted by the authority aforesaid, That every receiver of the King's Majesty's honours, manors, lands, possessions, rents and revenues for the time being, or his deputy or deputies, shall yearly make his several precepts to all and singular the collectors, ministers and bailiffs accomptant within the circuit of his office charging and commanding them on the King's Majesty's behalf, by the same precept, to appear before them personally, or by their sufficient deputy or deputies, for whom they will answer, within the county where the same offices, bailiwicks, receipts or collections do lie, at a certain day and place in the same precept to be limited, and to pay to the King's Majesty's use such sums of money as they ought to do by reason of any of their said offices, being due to our said Sovereign Lord the King at or before the feast of *Easter*, which they have or may by any lawful or due mean levy or receive within or by reason of their said offices or collections; And that the same precepts shall be severally delivered to every of the said officers, ministers, and bailiffs accomptant, or to their deputy or deputies, or else be left at their dwelling-houses, or at the manor, lordship or place where their receipt or collection is or ought to be, twelve days at the least before the day of appearance to them given and prefixed in the same precept or precepts.

The penalty where an accomptant maketh default of appearance or payment.

V. And if any of the said ministers, collectors, or bailiffs accomptant, upon or after any such precept or precepts at any time hereafter made by any such receiver, and being delivered and left in form aforesaid, do make default at the same day and place assigned and appointed in and by the said precept or precepts, that then the same collector, minister, or bailiff accomptant so making default, and not appearing as is aforesaid, and being thereof duly and lawfully convicted in the court where the revenue is or shall be answered, shall for the first offence lose and forfeit to the King our Sovereign Lord his whole fee for that year wherein he shall so make default, or the value thereof; and for non-payment of the said money due and payable at or before the said feast of

Easter unto our said Sovereign Lord the King, within or by reason of his said office, collection or bailiwick, shall lose and forfeit for the first offence of non-payment vi. d. of the pound, in the name of a pain, for every month after the said day of appearance, until the same money shall be by him or his deputy paid to the hands of the said receiver, to the King's Majesty's use.

The penalty for the second offence.

VI. And after the first default of appearance made by any of the said officers, and another like precept by the said receiver be made and delivered or left in form aforesaid, then the said officer or officers making again default, and being thereof lawfully convicted as is aforesaid, for the second default and offence for non-appearance shall lose and forfeit to the King our Sovereign Lord his office and fee: And for the said second offence in the non-payment of the said money due and payable within and by reason of his office, collection or bailiwick, at or before the said feast of *Easter*, shall lose and forfeit xii. d. of every pound, in the name of a pain, for every month after the said last day of appearance and default made as is aforesaid, until the same money shall be by him or his deputy paid to the hands of the said receiver, to the use of our Sovereign Lord the King.

The auditors' precepts to accomptants to make payment of their collections due at Michaelmas.

VII. And further be it enacted by the authority aforesaid, That all and every auditor and auditors of our said Sovereign Lord the King, of his Majesty's honours, manors, lands, possessions, rents and revenues for the time being, or his or their sufficient deputy or deputies, shall have full power and authority by virtue of this Act yearly to make their precept or precepts to all ministers, collectors and bailiffs accomptant, commanding them on the behalf of our said Sovereign Lord the King to appear and accompt before him or them personally, or else by their sufficient deputy or deputies, at a place certain within the county where the same lands and possessions do lie, at the King's Majesty's audit, to be holden there yearly between the feast of St. *Michael* the Archangel and the nativity of our Lord God, of and for all rents, revenues and profits due and payable within or by reason of their said offices, collections or bailiwicks, at or before the feast of St. *Michael* the archangel next before the same audit, expressing in the same precept or precepts the time and place when and where the same ministers, collectors and bailiffs accomptable, or their sufficient deputy or deputies, for whom they will answer, shall appear: The same precepts to be delivered to the same ministers, collectors, bailiffs accomptant or their deputy or deputies, or left at their dwelling-houses, or at the manor, lordship or place, where the receipts or collections are or ought to be, twelve days at the least before the day of appearance to him or them prefixed in the same precept or precepts. And if any minister, collector or bailiff accomptant do not appear before the said auditor or auditors, or his or their deputy or deputies at the said audit, according to the said precept; or else if he do appear and refuse to accompt for his said receipt, collection or bailiwick, before the said auditor or auditors, or his or their deputy or deputies; That then the said minister, collector or bailiff accomptant so making default and not appearing, or so refusing to accompt as is aforesaid, and being thereof duly and lawfully convicted in the court where the revenue is or shall be answerable, shall for his first offence lose and forfeit to our Sovereign Lord the King, his whole fee for that year wherein he shall so make default, or the value thereof: And for the non-payment of the said money due and payable within his collection, office or bailiwick, at or before the same feast of St. *Michael* the archangel, shall lose and forfeit to the King our Sovereign Lord, for his said first offence, six-pence of every pound, in the name of a pain, for every month after the said day of appearance and default made as is aforesaid, until he or his sufficient deputy or deputies shall accompt before the said auditor or auditors, or his or their deputy or deputies, for his said collection, receipt or bailiwick, and also pay unto the hands of the said receiver or receivers, all and every of such sum and sums of money as shall be found justly due by the said accomptant,

The penalty where an accomptant maketh default of appearance or payment.

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before the said auditor or auditors, or his or their deputy or deputies, to the King's Majesty, upon the foot and determination of his accompt: And after the first default of appearance made before the said auditor or auditors, or his or their deputy or deputies, by any of the said officers accomptant, being so warned as is aforesaid, and after another like precept made and delivered or left in form aforesaid, That then the said officer or officers that so shall make again default of appearance, for the said second offence in making default in his appearance as is aforesaid, and being thereof duly and lawfully convicted in the Court where the revenue of his said office is or shall be answerable, shall lose and forfeit to the King our Sovereign Lord his said office and fee.

The penalty for the second offence.

VIII. And for the second offence in non-payment of the said money, due and payable with and by reason of his receipt, collection or bailiwick, at or before the said feast of St. *Michael* the archangel, shall lose and forfeit to our Sovereign the King, xij. d. of every pound, in the name of a pain, for every month after the said last day of appearance and default made as is aforesaid, until he or his sufficient deputy or deputies shall accompt before the said auditor or auditors, or his or their deputy or deputies, for the said receipt, collection or bailiwick, and also pay unto the hands of the said receiver or receivers, or his or their deputy or deputies, to the King's use, all such sums of money as shall be justly found due by the said accomptant, upon the foot and determination of his said accompt.

Within what times the King's receivers shall make payment of the money by them received.

IX. And further be it enacted by authority aforesaid, That all and every receiver and receivers of the King's Majesty's honours, manors, lands, possessions, rents or revenues, shall make ready and full payment yearly to the treasurer or general receiver of the court where the said revenue is or shall be answerable, or otherwise as he or they are or shall be appointed and assigned by sufficient warrant, of all such sums of money as he or they shall know to be due to our Sovereign Lord the King, and can by any lawful or due mean obtain, get, have or receive of the rents or revenues of our said Sovereign Lord the King, with or by reason of their offices, being due at or before the feast of *Easter*, by the twentieth day of *June* then next following at the farthest: And also shall make like payment yearly of all their like receipts of the rents and revenues of our said Sovereign Lord the King that shall be due at or before the feast of St. *Michael* the archangel, by the twentieth day of *January* then next following at the farthest, upon pain of loss and forfeiture for every default at any of the said days, ij. d. of every pound, for every day that the said money so by them or any of them shall be unpaid.

When the King's receivers shall accompt.

X. And also it is further enacted, That all and every the said receiver and receivers, or their deputy or deputies for whom they will answer, shall enter into their accompt yearly in the term of St. *Hilary*, and fully and clearly finish the same accompt before the tenth day of *March* then next following, and make full and ready payment of the money that shall appear to be due upon the foot and determination of the same accompt, before the twentieth day of the said month of *March*, upon pain of forfeiture to our said Sovereign Lord the King, their offices and fees, and iv. d. of the pound for every day that they shall detain and withhold the same money, without making any payment thereof as is aforesaid.

The King's receivers, bailiffs, &c. may distrain for the arrearages of rent.

XI. And further be it enacted by the authority aforesaid, That all and every receivers, collectors and bailiffs of any of the King's honours, manors, lands, tenements, rents or revenues, for lack of payment and levying of their said rents, issues and revenues within their offices and charges, shall and may have power and authority from henceforth by virtue of this Act to distrain for the same, and to use and order the same distresses in such sort and form as any officer or officers of the King's Court of the Exchequer, for levying and lack of payment of the King's rents and revenues answerable in the same court heretofore have lawfully done, and may lawfully use to do, delivering to the party

distrained the surplusage and overplus of the value of every such distress, if any shall be, the King's debts and duties being first paid, and the distrainant answered of reasonable costs.

Amercing of sheriffs for not returning of writs touching the levying of the King's rents, &c.

XII. And that the head and chief officer or officers of every of the King's courts of revenue, being of record, or that shall be of record, shall have full power and authority by virtue of this Act, to set and assess reasonable fines and amerciaments upon any sheriff or sheriffs, for not returning, or misreturning, of any writ to them directed and delivered out of any of the same courts, touching or concerning the levying or answering of any of the said issues, rents or revenues, or of any debt due to our said Sovereign Lord the King, in such sort, and after such manner and form as now is, or heretofore hath been lawfully used in the like and such other cases, in the King's Highness court of the Exchequer.

These accomptants upon warning shall accompt and make ready payment.

XIII. Be it also further enacted by the authority aforesaid, That all treasurers and chamberlains, and general receivers of any of the King's Grace's courts of revenue for the time being, and all customers and collectors of customs, or certain and stalled subsidies within any port, haven or creek of this the King's realm of *England*, that now be or hereafter shall be, within ten days next after notice to him or them given from the King, or six of his most honourable privy council, in writing signed with their hands, shall by themselves, or their sufficient deputy or deputies for whom they will answer, declare in writing what sums of money, then being due unto our said Sovereign Lord the King, be at that time in his or their hands and custody, and shall make ready and full payment of all the said sums of money as then shall remain in his or their hands or custody, over and above the ordinary payments and sums of money contained and expressed in sufficient warrant or warrants resting and remaining in his or their office or offices, and being in their full force, strength and effect, and not lawfully countermanded nor revoked to their knowledge, to the use of our Sovereign Lord the King, at such time and in such sort as he or they shall be commanded and appointed by sufficient warrant, upon pain of forfeiture of his or their office or offices.

Within what time these accomptants shall yearly accompt.

XIV. And be it further enacted by the authority aforesaid, That the same treasurers, chamberlains and general receivers, by themselves, or by their deputy or deputies for whom they will answer, shall yearly before the twentieth day of *June* make a perfect accompt of all such money or treasure as hath come to their hands to the King's use, yearly, at or before the twentieth day of *March* then next before the said twentieth day of *June*, and shall make a perfect and whole declaration in writing of the money remaining in every of their hands, to the King's Majesty, or to his privy council, yearly, before the last day of *June* then next following, and make payment of the same at such time and in such sort as he or they shall be commanded or appointed by sufficient warrant, upon pain of forfeiture of his or their office or offices.

The penalty of an accomptant taking more than is due for the payment of any pension.

XV. And be it further enacted, That if any treasurer, receiver or minister accomptant, or their deputy or deputies, do take or receive of any person or persons any sum or sums of money, or other profit of and for the payment of any fees, annuities, pensions, duties or warrants, more or otherwise than he or they may lawfully do by former laws and statutes therein provided; That then the said treasurer, receiver and minister so offending, shall forfeit and lose for every penny or pennyworth so to be taken or received, vj. s. viij. d. to the party grieved, to be recovered in any of the King's courts of record, by bill, plaint or action of debt, in which suit no wager of law, essoin or protection shall be allowed.

The penalty if the auditors refuse or delay to take an accompt.

XVI. And be it also enacted, That if any auditor or auditors, or his or their deputy or deputies, which ought to take the accompt of any treasurer, chamberlain, receiver or other officer accomptable before him or them, do refuse or willingly protract and delay the taking of the same accompt, in such wise as it cannot be finished within the time

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or times limited and appointed by this Act for the taking and finishing thereof, that then every auditor so refusing or protracting and delaying, as is aforesaid, and being thereof duly and lawfully convict in the court where the revenue or charge of the same accompt is or shall be answerable to the King, shall incur, forfeit and lose such like pain, loss and forfeiture, as the treasurer, chamberlain, receiver or other officer abovesaid, shall and ought to do by this Act, for not accompting of and for their charges and office and offices: And thereby the same treasurer, chamberlain, receiver and other officer that should accompt, and shall be refused, or shall be protracted and delayed as is aforesaid, shall be discharged of any pain, loss or forfeiture for not accompting as is abovesaid.

The copy of the accompt shall be delivered to the accomptant.

XVII. And be it further enacted, That the duplicate or copy of every accompt that shall be made by any treasurer or receiver, or by their deputy or deputies, in form aforesaid, within convenient time after the finishing of the same accompt, and at the reasonable request and costs of such accomptant, shall be delivered to them or any of them, subscribed with the hands of the auditor or auditors that shall take the same accompt, or of his or their deputy or deputies for whom he or they will answer, upon pain that the same auditor or auditors shall lose and forfeit to the King's Majesty ten pound for every such default.

Bishops accompt and payment of tenths.

XVIII. Provided alway, and be it enacted by the authority aforesaid, That this Act, nor any thing therein contained shall in any wise extend to charge any archbishops or bishops of this realm, or of any other the King's Majesty's dominions, or any of them, at any time hereafter to make any manner of bonds, or to make their accompt and payment of the tenths arising and growing within any of their dioceses, due or to be due to our said Sovereign Lord the King, otherwise or in any other manner and form than they or any of them heretofore have been charged, or accomptable and chargeable by the laws and statutes of this realm; any thing in this Act to the contrary notwithstanding.

The revenues of Calais.

XIX. Provided always, That this Act, or any thing therein contained, shall not extend to cause the rents, profits and revenues, rising and growing to the King's Majesty within the town or marches of *Calice*, to be answered or paid otherwise, or at any other days or times, than heretofore hath been used and accustomed; any thing in this Act to the contrary notwithstanding.

Which officers shall not be chargeable by this statute.

XX. Provided always, and be it enacted by the authority aforesaid, That this Act, nor any thing therein contained, shall in any wise extend to touch or charge any sheriff, escheator or collector of any *dismes*, *quindismes*, benevolences, contributions or subsidies, (subsidies of tonnage and poundage only except), but that they and every of them shall and may do and exercise their said several offices, and pay such sums of money as they or any of them be, or hereafter shall be, charged withal by their said several offices, in such and like sort, manner and form, as they and every of them have usually done, or should or ought to do, if this Act had never been had or made; this Act or any thing therein contained to the contrary in any wise notwithstanding.

[No. XIII.] 13 Elizabeth, c. 4.—An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers, &c. liable to the Payment of their Debts.

13 Elizabeth, c. 4.

Treasurers, receivers and other accountants of lands shall be liable for the payment of the Queen's debts

FOR the better security of the Queen's Majesty, her heirs and successors, against such as shall have the receipt and charge of the money and treasure of her Highness, her heirs and successors, Be it declared and enacted by the Queen's Majesty, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That all lands, tenements, profits, commodities and hereditaments, which any treasurer or receiver in or belonging to any of the Queen's Majesty's Courts of the Exchequer, wards and liveries, or duchy of *Lancaster*, treasurer of

No. XIII. 13 Elizabeth, c. 4.

the chamber, cofferer of the household to the Queen's Majesty, her heirs or successors, treasurer for the wars, treasurer of any fort, town or castle, where any garrison is or shall be kept, treasurer of the admiralty or navy, treasurer, under-treasurer or other person accomptable to the Queen's Majesty, her heirs or successors, for any office or charge of or within the Mint, treasurer or receiver of any sums of money imprest, or otherwise, (1) for the use of the Queen's Majesty, her heirs or successors, or for provisions of victual, or for fortifications, buildings or works, or for any other provisions to be used in any the offices of the Queen's Majesty's ordnance and artillery, armory, wardrobe, tents and pavilions, or revels, customer, collector, farmer of customs, subsidies, imposts or other duties within any port of the realm, collector of the tenths of the clergy, collector of any subsidy or fifteen, receiver general of the revenues of any county or counties, answerable in the receipt of the Exchequer, or in the court of wards and liveries, or the duchy of *Lancaster*, clerk of the hamper, now hath, or at any time hereafter shall have, within the time whilst he or they or any of them shall remain accountable; shall for the payment and satisfaction unto the Queen's Majesty, her heirs and successors, of his or their arrearages, at any time hereafter to be lawfully, according to the laws of this realm, adjudged and determined upon his or their account (all his due and reasonable petitions being allowed) be liable to the payment thereof, and be put and had in execution, for the payment of such arrearages or debts to be so adjudged and determined upon any such treasurer, receiver, teller, customer, collector, farmer, officer or accomptant, as is before named, in like and in as large and beneficial manner to all intents and purposes, as if the same treasurer, receiver, teller, customer, farmer or collector, upon whom any such arrearages or debts shall be so adjudged or determined, had the day he became first officer or accomptant stood bound by writing obligatory, having the effect of a statute of the staple, to her Majesty, her heirs or successors, for the true answering and payment of the same arrearages or debts.

by them not paid, &c. This Act extended to under-collectors of tenths, &c. by 14 Eliz. c. 7.

'II. And forasmuch as many times it may come to pass, that the 'Queen's Highness, her heirs or successors, shall not or may not be 'conveniently satisfied of the debt to be determined or due upon any 'account or farm as is aforesaid, by way of extent, for that the yearly 'value of the lands extended will not satisfy her Highness, her heirs or 'successors, within the compass of many years, so as thereby great loss 'might ensue to her Highness, her heirs and successors;' For remedy thereof be it further enacted, That if any treasurer, receiver, collector, farmer, customer, teller, collector of custom, subsidy or impost, or other person accountant before-mentioned, which shall from and after the feast of St. *Michael* the Archangel now next coming receive or be chargeable with any money or treasure of our said Sovereign Lady the Queen, her heirs or successors, and shall upon the determining of his or their account (all his and their due petitions to them upon the same account being allowed) or by reason of any farm, as aforesaid, be found in arrearages, or to owe unto our said Sovereign Lady the Queen, her heirs or successors, any sum or sums of money, and shall not within the space of six months next after his or their accounts finished, or debt known, (having allowance of his or their due and reasonable petitions, as is aforesaid) truly satisfy and pay all such arrearages and sums of money as he or they shall owe upon determination of his or their account, or upon his or their debt known, as is aforesaid; that then it shall and may be lawful to the Queen's Highness, her heirs and successors, at any time, and from time to time, after the said six months ended, to make sale by her or their letters patents under the great seal of *England*, of so much of the lands, tenements and hereditaments of every such accountant or debtor so being found in arrearages or in debt, as is aboye-mentioned, as may suffice our said Sovereign Lady the Queen, her heirs or successors, for the satisfaction of his or their debt or arrear-

Certain cases wherein the Queen may sell the accountant's lands.

Such sale good after the death of such accountant, &c.

(1) Vide 4 Taunt. 334.

No. XIII. 13 Elizabeth, c. 4.

ages, to be determined or adjudged upon his or their account or farm, as is aforesaid, (all due petitions being allowed, as is aforesaid) until her Majesty, her heirs or successors, be by such sale fully satisfied and paid off such arrearages and debt to be found upon account or farm, as is aforesaid.

Delivery of the overplus to the owner of the land.

III. And if any overplus of money shall be received or had upon any such sale, then the same shall be paid and delivered to the accountant or farmer, or his heirs, by the officer that shall receive the money upon any of the said sales, without any further or other warrant in that behalf to be made or obtained.

The sale good against * *the Queen and accountant.*

*Read, *against the party accountant.*

IV. And be it further enacted by the authority aforesaid, That all the said sales to be made by the Queen's Majesty, her heirs or successors, as is aforesaid, shall be good and available in law against the party accountant indebted as is aforesaid, and his heirs claiming as heirs, and against the Queen's Majesty, her heirs and successors, notwithstanding any former charge or incumbrance to her Majesty, her heirs and successors, by the person or persons for whose debt or duty the same shall fortune to be sold.

Accountant purchaseth lands in others' names.

V. And be it further enacted by the authority aforesaid, That if any person or persons accountant or indebted, as is aforesaid, shall at any time after he or they shall become accountant or chargeable, as is aforesaid, purchase and buy, or cause to be purchased and bought, any lands, tenements or hereditaments, and cause the assurance thereof to be made in the name of any other person or persons, where the same is indeed meant or intended to the use, profit or behoof of such person accountant or indebted, or of any other person or persons, and that the same manner of purchasing, and secret uses, profits or behoof, shall be found by office or inquisition; That then all and every lands, tenements and hereditaments so to be bought or purchased, or caused to be purchased (as is before mentioned in this last proviso) shall by virtue of this Act be taken, deemed and used for the satisfaction of the arrearages and debt of every such accountant or debtor, as is above-mentioned, to all intents and purposes, as though the person or persons indebted upon his or their account or farm were thereof actually seized of such estate that was conveyed to any person or persons, by any such accountant or debtor, or by his means, as is aforesaid: And that all sales to be thereof made by the Queen's Majesty, her heirs or successors, for satisfaction of such debt or arrearages as shall be found, as is aforesaid, to be due and owing to our said Sovereign Lady the Queen, her heirs and successors, shall be of the like effect, and be used and done in such like manner and form, as is before expressed.

'VI. And whereas heretofore some treasurers, tellers, receivers, collectors and others, having had charge of the Queen's Majesty's money and treasure, have gotten into their hands great sums of the Queen's Majesty's money and treasure sithence the beginning of her Majesty's reign, and have most fraudulently employed her Majesty's money and treasure which they had in their charge, in sundry wise to their own uses, partly in the purchasing her Majesty's own lands, and partly in purchasing lands of others: And to the intent the same should not be liable to satisfy and pay her Majesty, her heirs or successors, of that which to her or them should appertain, have purchased the same sometimes in their own names, and sometimes in the names of sundry their friends and kinsfolks, wives or children, and yet nevertheless have taken and received the rents and revenues thereof to their own uses:'

Lands purchased by accountants since the beginning of the Queen's reign.

VII. Be it therefore further enacted and ordained by the authority aforesaid, That all and singular lands, tenements and hereditaments, which any treasurer, receiver, teller, customer, collector, officer or accountant before named, hath heretofore since the beginning of the Queen's Majesty's reign purchased or caused to be purchased, to the intent the same should not be liable, as is aforesaid (the fraud and covin aforesaid being first found by office or inquisition) shall and may be seized and taken by her Majesty, her heirs and successors, and retained by her Majesty, her heirs and successors, in fee simple, to be sold or

otherwise used at her and their wills and pleasures, towards the payment and satisfaction of all and every arrearages already set or determined and adjudged, or that hereafter shall be set, determined or adjudged, upon his or their account (all reasonable and due petitions being allowed) at such rate and value as the same were purchased or bought, or caused to be purchased or bought, by any such treasurer, receiver, teller, customer or collector before named, or by any other person to their use.

The Queen shall seize only so much land as will satisfy her.

VIII. Provided always, That if the lands and tenements so to be seized, taken or sold, by her Majesty, her heirs or successors, as is last above-mentioned, do surmount, after the rate and value aforesaid, the debt and arrearages to be set, determined and adjudged upon the account of any treasurer, receiver, teller, customer, collector or accomptant before named, that then her Majesty, her heirs and successors, shall take and seize only so much as shall amount, after the rate and value aforesaid, to the just payment and satisfaction of such debt and arrearages as hath been or shall be set, determined or adjudged upon his or their account as is aforesaid.

No bishop's lands shall be chargeable.

IX. Provided always, and be it further enacted by the authority aforesaid, That no bishop having the collection of any subsidy or tenths, or any his lands, tenements or hereditaments, whereof he is seized in the right of his bishopric, shall be charged by virtue of this Act for any arrearages of tenths or subsidy, otherwise or in any other manner than he might lawfully have been before the making of this Act; any thing herein contained to the contrary thereof notwithstanding.

Accountant whose receipt exceedeth not 300*l.*

X. And be it also further provided and enacted by the authority aforesaid, That this Act, or any thing therein contained, shall not in any wise extend to charge any treasurer, receiver, teller, customer, collector or accomptant aforesaid, having any yearly receipt, nor any their lands, tenements or hereditaments, whose yearly receipt, collection and charge, or whose whole receipt from the beginning of his charge, is not or hath not been, or hereafter shall not be, above the sum of three hundred pounds; otherwise or in any other manner and form than he or they might lawfully have been charged before the making of this Act; any thing herein contained to the contrary thereof notwithstanding.

Accountants which are not to make present payment.

'XI. And forasmuch as sundry the accountants before named, 'namely, the treasurer of the chamber, and cofferer of the household, 'of our said Sovereign Lady the Queen, her heirs and successors, 'treasurers of wars or garrisons, treasurers of the navy, treasurers or 'receivers of any sums of money for provision of victual, or for fortifi- 'cations, or for buildings, and master of the wardrobe, are by order of 'their offices and charge, after their accounts ended and determined, to 'disburse, expend and defray the debt remaining upon their accounts, 'in such charges as are necessarily and incidentally to be spent and 'provided in their offices and charges, so as they are not of such sums of 'money or debt remaining upon their account to make present pay- 'ment and satisfaction as other accountants are:'

XII. Be it therefore enacted and ordained by the authority aforesaid, That this Act or any thing therein contained shall not extend to give any power or authority to make sale of any lands, tenements or hereditaments, for any such debt to be set and adjudged in any of his or their accounts mentioned in this branch, unless the Queen's Majesty, her heirs and successors, upon the ending or determining of his or their accounts (all his or their due petitions to them upon the same accounts being allowed) require or command present payment thereof, or otherwise eftsoons require a new account of the same debt so set or remaining in any the accounts mentioned in this branch; and that then the same debt, or any part thereof, shall be found to be owing and unexpended in the matters or charges pertaining to any of their said offices or charges mentioned in this branch, and the same debt remain unpaid by the space of six months after such request or commandment.

No. XIII. 13 Elizabeth, c. 4.

This Act shall not charge any sheriff, escheator, or bailiff of liberties.

XIII. Provided alway, That this Act shall not extend to charge any sheriff, escheator or bailiff of liberties, or the lands, tenements or hereditaments of any sheriff, escheator or bailiff of liberties, nor of any their heirs or assigns, for any thing touching his or their office of sheriffwick, escheatorship, or bailiffwick, nor for any money by him or them received or to be received by reason of any their said offices, otherwise or in any other manner than he or they might lawfully have been charged before the making of this Act; any thing herein contained to the contrary notwithstanding.

Lands purchased *bona fide*.

XIV. Provided also, That this Act, as touching only the sale of any lands or tenements, shall not extend to any lands, tenements or hereditaments, which any person or persons now have or enjoy, and have purchased or obtained *bona fide*, and not being privy or consenting unto any such intent to defraud the Queen's Majesty, as is abovesaid: And that it shall be lawful to every person and persons whose lands, tenements or hereditaments, shall by any office or inquisition be found to be fraudulently conveyed or assured, as is abovesaid, to have his or their lawful traverse to every such office or inquisition; and if it be found with the party that tendreth the traverse, that then he shall have the said lands out of the prince's hands without any petition, livery or *ouster le main*, or any other suit to be had, made or used; and the same being found for such person or persons so traversing, the same lands, tenements and hereditaments, shall be adjudged as not liable, chargeable, nor to be sold by force of this statute.

Any party grieved may have a traverse.

If the Queen do sell the accountant's lands, his sureties shall be discharged for so much.

XV. Provided also, and be it enacted, That if the Queen's Majesty, her heirs or successors, shall by any sale of lands by force of this statute be fully satisfied of the debt or arrearages of any such accountant or debtor, or any part thereof, then the sureties of such accountant or debtor shall be discharged of so much of the said debt, forfeiture and arrearages, as so shall be satisfied, and for the residue only shall be rateably according to their abilities charged; any thing in this or any other statute to the contrary notwithstanding.

Certain persons not chargeable by this Act.

XVI. Provided always, That this Act, nor any thing therein contained, shall in any wise extend to charge *Henry Golding*, Esq.; and *Thomas Neale*, one of the Queen's Majesty's auditors, or the lands or tenements of either of them, to whom the Queen's Majesty hath demised any customs, subsidies or imposts, in any thing only touching the said demise and lease, otherwise or in any other manner than they might have been lawfully charged if this Act had never been had or made, except they or either of them do hereafter take any of the profits of the said subsidies, customs or imposts by force of the said demise; any thing herein contained to the contrary thereof notwithstanding.

[No. XIV.] 27 Elizabeth, c. 3.—An Act for the Explanation of an Act made in the thirteenth Year of the Queen's Majesty's Reign, intituled "An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers, &c. liable to the Payment of their Debts."

27 Elizabeth, c. 3.

'WHERE in the Parliament holden at *Westminster* the second day of *April* in the thirteenth year of the reign of our Sovereign Lady Queen *Elizabeth*, there was amongst other things an Act made, intituled, "An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers, &c. liable to pay their Debts;" upon which Act some doubt and question hath been moved, whether the Queen's Highness, her heirs and successors, might for the satisfaction of her and their debts and farms, by her or their letters patents under the great seal of *England*, make sale of any the lands, tenements, and hereditaments, whereof her Highness, her heirs and successors, have power or authority to make sale by virtue of the same Act, after the death of such accountant or debtor as is mentioned in the said Act,

A question arising upon the exposition of the statute of 13 El. c. 4.

'or where the account of such accountant or debtor was not or is not 'made, or his or their debt known in the lifetime of the same account-'ant or debtor:'

Sale of the accountant's lands after his death.

II. For declaration and explaining whereof, be it declared and enacted by the authority of this present Parliament, That the said Act, in every part thereof, touching the power given by that recited Act unto her Highness, her heirs and successors, to make sale of any the lands, tenements, or hereditaments, by the same Act limited to be sold, is, shall and ought to be expounded and intended, as well in case where the sale is to be made after the death of such accountant or debtor, as where it is to be made in his or their life time; and also as well in case where the account is made, or the debt known within eight years after the death of such accountant or debtor, as where the same account is made, or the debt known in the lifetime of the same accountant or debtor; any ambiguity or question that hath risen or grown, or may arise, grow or be conceived, upon the letter of the same Act to the contrary thereof in any wise notwithstanding.

The accountant's debt known within eight years after his death.

Process against the accountant's heir before the sale of his lands.

III. Provided always, and be it enacted by the authority aforesaid, That after the death of such accountant and debtor, as is mentioned in the said recited Act, and before such time as any the lands, tenements and hereditaments descended unto the heir of such accountant or debtor as heir unto the same accountant or debtor, shall be sold as aforesaid, a *scire facias* shall be awarded out of her Majesty's Court of Exchequer unto the sheriff of the county where any such lands do lie, to garnish the same heir to shew cause why the same lands, tenements and hereditaments so to him descended as aforesaid, should not be put to sale for satisfaction of the same debts or farms in the same Act mentioned, according to the tenor of the said Act; whereupon if the heir do not within a convenient time upon a garnishment or two *nichils* returned, shew and prove unto the said court, that the executors or administrators of such accountant or debtor have sufficient, which ought to answer or be liable for the same debt or farm, and whereby the said debt or farm shall and may be duly and fully satisfied; That then after ten months next after such two *nichils*, or garnishment returned, the same lands, tenements and hereditaments shall be sold by her Majesty, her heirs or successors, and the money thereof coming disposed according to the true intent and meaning of the said former recited Act.

The heir's sale good to him who is not consenting to defraud the Queen.

IV. And be it further enacted by the authority aforesaid, That the said recited Act, and this statute of explanation also, as touching only the sale of any lands, tenements or hereditaments, to be made after the death of such accountant or debtor as is aforesaid, shall not extend to any lands, tenements or hereditaments, which any person or persons not being privy or consenting unto any such intent to defraud the Queen's Majesty, her heirs or successors, as in the said recited Act is mentioned, now have or enjoy, or have purchased or obtained, or before any *scire facias* so to be awarded as aforesaid, shall have or enjoy, purchase or obtain *bona fide* and upon good consideration; any thing in this Act, or in the before mentioned Act to the contrary thereof in any wise notwithstanding.

To what accountants this statute of explanation shall extend.

V. Provided always, and be it enacted, That this Act of explanation shall extend only unto such as have been or shall be tellers, receivers, treasurers, customers, cofferers of the household, farmers of impost, collectors, bailiffs, victuallers, and other officers of receipts and accounts unto our Sovereign Lady the Queen's Majesty, her heirs and successors, and to every of them, their heirs, executors and administrators, and to no other.

Process against the heir where the debt groweth in the court of wards or duchy.

VI. Provided also, and be it further enacted by the authority aforesaid, That in such cases where any account shall or ought to be made, or any debts shall be owing in the courts of the duchy of *Lancaster*, and wards and liveries, or in any of them, then after the death of such accountant or debtor as is mentioned in the said former Act, in any of the said last mentioned courts, and before such time as any of the lands,

No. XIV. 27 Elizabeth, c. 3.

tenements or hereditaments, descended unto the heir of such accountant or debtor as heir unto the same accountant or debtor, shall be sold as aforesaid, such process shall be awarded as hereafter is expressed; that is to wit, first a privy seal, commanding the same heir to make personal appearance in the court out of which the same privy seal shall be awarded to shew cause, as in the writ of *scire facias* to be awarded out of the Exchequer is before appointed: And if the same heir shall make default at the day of the return of the same privy seal, That then upon the affidavit made, that the same privy seal was duly served, either upon the person of the same heir, or left at the place of his or her dwelling or most usual abode, an attachment with proclamation shall be awarded against the same heir, and shall be openly published and proclaimed in some market town in the county where the same heir was last dwelling, or made his or her usual abode, upon some market day there in the time of open market, twenty days at the least before the return thereof: And if upon return thereof the said heir shall eftsoons make default, that then all things shall be done and executed for the sale of the same lands, tenements and hereditaments, and for the full satisfaction of the same debt or farm, in like and as large and ample manner and form, to all intents and purposes, as before in this Act is limited and appointed in cases where default is made upon a garnishment or two *nichils* returned upon a *scire facias* awarded out of the said Court of Exchequer.

No sale of the heir's lands during his minority.

VII. Provided also, and be it likewise enacted, That if the heir of any accountant or debtor before mentioned, shall happen to be within the age of one and twenty years when any such process shall fortune to be awarded, that then during the time of his or her nonage, this Act or any thing therein contained shall not in any wise be extended, executed or put in ure, as touching or concerning only the selling of the lands, tenements or hereditaments of any such heir; any thing in the same Act contained to the contrary in any wise notwithstanding: And yet nevertheless, after such time as any such heir shall accomplish the full age of twenty-one years, all and singular the lands, tenements and hereditaments descended unto the same heir from any such debtor or accountant as aforesaid, shall at all times during the space of eight years then next ensuing, be subject and liable to be sold for the payment and satisfaction of her Majesty, her heirs and successors, according to the intent and true meaning of this Act, in such manner and form to all intents and purposes, as if the same heir had been of full age at the time of the death of such debtor or accountant.

The heir's lands liable to sale eight years after he shall accomplish his full age.

No sale of lands where the accountant hath a *quietus est.*

VIII. Provided always, and be it enacted, That this Act, or any thing therein contained, shall not extend to the sale of the lands, tenements or hereditaments of any such heir or heirs, for or by reason of any account, debt or farm, whereof any such debtor or accountant have or shall have a *quietus est*, or discharge in his or their lifetime. 39 El. c. 7. revived by 1 Jac. 1. c. 25. § 31.

[No. XV.] 7 James I. c. 15.—An Act concerning some Manner of Assignment of Debts to his Majesty.

7 James I. c. 15.

What debts only may be assigned to the King.

'WHEREAS it is conceived that some manner of assignments of 'debts, if they should be made to his Majesty, his heirs and suc-'cessors, the same would be inconvenient:' His Majesty therefore is well pleased that it be enacted, and be it enacted by authority of this present Parliament, That no debt shall at any time after the first day of *July*, which shall be in the year of our Lord God One thousand six hundred and ten, be assigned to the King's Majesty, his heirs and successors, by or from any debtor or accountant to his Majesty, his heirs or successors, other than such debts as did before grow due originally to the King's debtor or accountant *bona fide:* and that all grants and assignments of debts to the King's Majesty, his heirs or successors, which from and

after the said first day of *July*, shall be had or made contrary to the true intent of this Act, shall be void and of no force; any law, custom, privilege, or thing, to the contrary in any wise notwithstanding. No. XV. 7 James I. c. 15.

[No. XVI.] 22 and 23 Charles II. c. 22.—An Act for the better and more certain Recovery of Fines and Forfeitures due to his Majesty.

22 & 23 Car. II. c. 22.

'WHEREAS by divers statutes in old time made, it was provided, That the estreats of fines, issues, amerciaments and other forfeitures should be certified and delivered into the Exchequer yearly, and that from thence the estreats of the summons should go forth through all shires for the levying thereof: Since the making of which laws many are the abuses and mischiefs arisen and practised, not only by the not timely certifying and estreating the said fines and forfeitures, but also by the sinister practice amongst officers, in sparing, discharging and not certifying at all, or if they do certify, yet by mis-certifying and estreating the said fines and forfeitures in and into the said Court of Exchequer:'

All fines, post-fines, issues, amerciaments, recognizances, and other forfeitures forfeited in the King's Bench, or Common Bench, to be certified twice every year into the Exchequer.

II. For remedy whereof, and mischiefs of the like kind, Be it enacted and ordained by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from henceforth all fines, post-fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, and all other forfeitures whatsoever, which already are or hereafter shall be set, imposed, lost or forfeited in his Majesty's Courts of King's Bench, Common Bench or Exchequer, shall be certified and estreated in and into the said Court of Exchequer, twice in every year yearly, (that is to say) All fines, post-fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, and all other forfeitures whatsoever arising in any of the said courts, from the beginning of every *Hilary* Term in every year to the beginning of every *Trinity* Term in every year, shall be and are hereby ordained to be certified and estreated in and into the said Court of Exchequer, the last day of every *Trinity* Term in every year.

Hilary Term. Trinity Term.

The penalty.

III. And all fines, post-fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid and to be paid in lieu or satisfaction of them or any of them, and all other forfeitures whatsoever arising in any of the said courts, from the beginning of every *Trinity* Term in every year to the beginning of every *Hilary* Term in every year, shall be in like manner certified and estreated in and into the said Court of Exchequer, the said last day of every *Hilary* Term in every year; on pain that every officer and minister of or belonging to the said courts or any of them, to whom it doth, ought or shall belong or appertain, to make certificate or estreat of any of the said fines or forfeitures, making default or offending therein, to forfeit and pay fifty pounds for every such default or failure that shall be made in certifying and estreating as aforesaid; the one moiety to the use of his Majesty, his heirs and successors, and the other moiety to such person or persons that shall or will sue for the same in any court of record by action of debt, bill or information, wherein no wager of law, essoin or protection shall be allowed.

A saving out of this Act.

IV. Provided always, That nothing in this Act contained shall alter or change the course now used in the certifying and estreating of issues from the said Court of Common Bench, nor of fines *pro licentia concordandi*, commonly called post-fines, being termly certified and estreated into the said Court of Exchequer, nor the termly estreating of issues certified out of the office of pleas belonging to the said Court of Exchequer, to the clerk of the estreats there.

No. XVI. 22&23 C. II. c. 22.

All fines and forfeitures, &c. before judges of assize, clerks of the market, or commissioners of sewers, to be in like manner certified.

V. And be it further enacted and ordained by the authority aforesaid, That all fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, and all other forfeitures whatsoever, which already are or hereafter shall be set, imposed, lost or forfeited, by or before any judge or judges of assize, clerk of the market or commissioners of sewers throughout the kingdom of *England*, shall be and are hereby ordained to be certified and estreated into the said Court of Exchequer twice in every year yearly, (that is to say) All fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, arising or happening in any of the said courts last mentioned, or before any judge or judges of the same, from the Feast of St. *Michael* the Archangel in every year, to the Feast of *Easter* in every year, shall be certified and estreated in and into the said Court of Exchequer, before the first day of *Trinity* Term in every year.

The time when.

VI. And all fines, issues, amerciaments forfeited, recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, arising or happening in any of the said courts last mentioned, from the said Feast of *Easter* in every year to the said Feast of St. *Michael* the Archangel in every year, shall be certified and estreated into the said Court of Exchequer before the first day of *Hilary* Term in every year; on pain that every such person and persons to whom it doth, ought or shall belong or appertain to make certificate or estreats of the said fines or forfeitures, making default herein, to forfeit and pay fifty pounds for every such default or failure that shall be made in certifying and estreating as aforesaid; the one moiety to the use of his Majesty, his heirs and successors, and the other moiety to such person or persons that shall or will sue for the same, in any court of record by action of debt, bill or information, wherein no wager of law, essoin or protection shall be allowed.

Forfeiture.

All clerks of the peace, and town clerks, to deliver to the sheriff a schedule of all fines, &c.

VII. And be it further enacted and ordained by the authority aforesaid, That all and every the clerk and clerks of the peace, and all town clerks, and every of them within the kingdom of *England*, do and shall make and deliver to the sheriff or sheriffs of the county, city or town corporate, where the sessions of the peace is or shall be kept, within twenty days after the nine and twentieth day of *September* in every year yearly, a true or perfect estreat or schedule of all fines, issues, amerciaments forfeited, recognizances, sum and sums of money and other forfeitures whatsoever, that are or shall happen to be imposed, set, lost or forfeited in any of the said sessions of the peace respectively, which shall be held before *Michaelmas*, by or upon any person or persons whatsoever, due to his Majesty;

And return a duplicate into the Exchequer.

VIII. And also do and shall yearly in every year, on or before the second Monday after the Morrow of *All Souls*, make and deliver into the said Court of Exchequer, a true and perfect duplicate, certificate and estreat of all such estreats and schedules so delivered to the respective sheriffs as aforesaid, That so the respective sheriffs on their apposals in the said Court of Exchequer, may be charged with the monies levied and received by him or them respectively, upon such schedules delivered as aforesaid; on pain that every such person and persons offending herein, for every such default or failure made, do forfeit and pay fifty pounds; the one moiety to the use of his Majesty, his heirs and successors, and the other moiety to such person or persons that shall or will sue for the same, to be recovered in any court of record, by action of debt, bill or information, wherein no essoin, protection, or wager of law shall be allowed.

The penalty.

All persons whatsoever shall not withhold, but estreat all fines, &c. into the Exchequer.

IX. And be it further enacted and ordained by the authority aforesaid, That no officer or minister of or belonging to any of his Majesty's Courts of King's Bench, Common Bench or Exchequer, nor any clerk of assize, clerk of the peace, town clerk, nor any officer or minister under them, or any of them, nor other person or persons whatsoever, do or shall spare, take off, discharge, or wittingly or willingly conceal

any indictment, fine, post-fine, issue, amerciament forfeited, recognizance or other forfeiture whatsoever, exhibited, set, imposed, lost or forfeited, or to be exhibited, set, imposed, lost or forfeited in any of the said courts before mentioned, or before any judge or judges of or belonging to the same, or any sum or sums of money paid or to be paid to any officer or officers in lieu or satisfaction of any fine or forfeiture, unless it be by rule or order in court where such indictment, fine, post-fine, issue, amerciament forfeited, recognizance or other forfeiture, is or shall be exhibited, set, imposed, lost or forfeited; nor shall any of the said officers or ministers aforesaid, or any of them, or any other, wittingly or willingly miscertify or estreat in or into the said Court of Exchequer, any fine, post-fine, issue, amerciament forfeited, recognizance or other forfeiture whatsoever, whereby the process of the said Court of Exchequer for the levying of the same may be made invalid and of none effect; but every such officer and officers, and all and every other person and persons offending herein, shall for every such offence forfeit and pay treble the value of such fine, post-fine, issue, amerciament forfeited, recognizance, sum and sums of money, and other forfeiture so spared, taken off, discharged, concealed, not certified, or estreated, or miscertified or estreated as aforesaid; the one moiety thereof to the use and behoof of his Majesty, his heirs and successors, and the other moiety to such person or persons as shall or will sue for the same in any court of record, by action of debt, bill or information, wherein no wager of law, essoin or protection shall be allowed; and also shall lose his and their office and place, and be for ever incapable to be employed in any office or place where any part of his Majesty's revenue is to be managed or paid.

Upon all certificates and estreats, the green wax shall go forth for the levying of the same.

X. And lastly, Be it enacted and ordained by the authority aforesaid, That where any fine or fines, sum or sums of money, or other forfeitures due to his Majesty, his heirs or successors, shall from henceforth at any time or times be paid to any sheriff, clerk of assize, clerk of the peace, or other officer or minister whatsoever belonging to any court or courts, and be according to the intent and directions of this Act certified and estreated in or into the said Court of Exchequer; there and in such case the summons or process of the green-wax shall go forth and be awarded to the respective sheriffs against such officer and officers, and other persons to whom such fine or fines, sum or sums of money, or other forfeiture is or shall be so paid, for the levying and receiving of the same, that so it may appear when, to whom, and how such monies are received, answered and paid to his Majesty, his heirs and successors; any custom, or usage to the contrary notwithstanding.

A saving of all rights and liberties.

XI. Provided always, and be it enacted by the authority aforesaid, That nothing in this Act contained shall in any sort extend, or be construed to extend, to the prejudicing of the rights and privileges of any bodies politic or corporate or their successors, or of any lord or lords of any manor, liberty, or franchise whatsoever; any thing herein to the contrary thereof in any wise notwithstanding.

A saving to the city of London.

XII. Provided always, and be it enacted by the authority aforesaid, That nothing in this Act contained shall extend to or be any ways prejudicial to the rights, customs, privileges, liberties, charter or charters of the city of *London*; but that the said city may enjoy the same accordingly as they formerly have enjoyed the same, in all respects, and to all intents and purposes whatsoever, in the same manner and form as they before this Act had enjoyed the same; any thing herein contained to the contrary thereof in any wise notwithstanding.

How long to continue.

XIII. And be it further enacted by the authority aforesaid, That this Act shall continue for three years, and from thence until the end of the next session of Parliament, and no longer. [Made perpetual by 4 & 5 W. & M. c. 24. sec. 4.]

No. XVII.
25 Geo. III. c. 35.

[No. XVII.] 25 George III. c. 35.—An Act for the more easy and effectual Sale of Lands, Tenements, and Hereditaments of Crown Debtors, or of their Sureties.

13 Eliz. c. 4.

'WHEREAS by an Act, made in the thirteenth year of the reign of Queen *Elizabeth*, (intituled, "An Act to make the lands, tenements, goods and chattels, of tellers, receivers, *et cetera*, liable to the payment of their debts"), for the better security of the Queen's Majesty her heirs and successors, against such as should have the receipt and charge of the money and treasure of her Highness, her heirs and successors, it was declared and enacted, That all lands, tenements, profits, commodities, and hereditaments, which certain officers of the Crown, farmers, and persons therein named, particularly the treasurer or receiver of any sums of money impressed, or otherwise, for the use of the Queen's Majesty, her heirs or successors, then had, or at any time thereafter should have, within the time he or they, or any of them, should remain accountable; should, for payment and satisfaction unto the Queen's Majesty, her heirs and successors, of his or their arrearages, at any time thereafter to be lawfully, according to the laws of the realm, adjudged and determined upon his or their account (all his due and reasonable petitions being allowed) be liable to the payment thereof, and be put in execution for payment of such arrearages or debts, in like and in as large and beneficial a manner, as if the person had, the day he became officer or accountant, stood bound by writing obligatory, having the effect of a statute of the staple, to her Majesty, her heirs or successors; and reciting, that forasmuch as many times it might come to pass, that the Queen's Highness, her heirs or successors, might not be conveniently satisfied of the debt to be determined or due upon any account as aforesaid, by way of extent, for that the yearly value of the lands extended would not satisfy her Highness, her heirs or successors, within the compass of many years, so as that great loss might ensue to her Highness, her heirs and successors; for remedy thereof it was enacted, That if any treasurer, or other person accountant before mentioned, which should, from and after the feast of Saint *Michael* then next ensuing, receive or be chargeable with any money or treasure of the Queen, her heirs or successors, and should, upon the determining of his or their account, or by reason of any farm as aforesaid, be found in arrearages and should not, within six months next after his or their accounts finished, or debt known, pay all such sums of money as he or they should, upon determination of his or their account, or upon his or their debt known, it should be lawful to the Queen's Highness, her heirs and successors, at any time, and from time to time, after the said six months ended, to make sale, by her or their letters under the great seal of *England*, of so much of the lands, tenements, and hereditaments, of every such accountant or debtor, so being found in arrearages or debt, as might suffice the Queen, her heirs or successors, for satisfaction, until her Majesty, her heirs or successors, should be by such sale fully satisfied and paid off such arrearages and debt; and that if any overplus should be received upon any such sale, then the same should be paid to the accountant or farmer, or his heirs, by the officer that should receive the same money upon any of the said sales,

27 Eliz. c. 3.

without further warrant in that behalf: And whereas by an Act, made in the twenty-seventh year of the same Queen, after reciting certain doubts upon the said Act of the thirteenth year of her reign, it was declared and enacted, That the said recited Act, in every part thereof touching the power thereby given to her Highness, her heirs and successors, to make sale of any the lands, tenements, or hereditaments, by the same Act limited to be sold, should be expounded and intended, as well in case where the sale is to be made after the death of such accountant or debtor, as where it is to be made in his or their

'life-time; and also as well in case where the account is made, or the 'debt known, within eight years after the death of such accountant or 'debtor, as where the same account is made, or the debt known, in 'the life-time of the same accountant or debtor; but it was provided, 'That after the death of such accountant or debtor, and before any the 'lands, tenements, and hereditaments, descended unto the heir of such 'accountant or debtor as heir, should be sold, a *scire facias* should be 'awarded out of her Majesty's Court of Exchequer unto the sheriff of 'the county where any such lands lie, to garnish the same heir, to shew 'cause why the same lands, tenements, and hereditaments should not be 'put to sale for satisfaction of the same debts or farms in the said Act 'mentioned, according to the tenor thereof; whereupon if the heir 'should not, within a convenient time, upon a garnishment or two '*nichils* returned, shew and prove unto the said court that the executors 'or administrators of such accountant or debtor have sufficient, which 'ought to answer or be liable for the same debt or farm, then after ten 'months next after such two *nichils* or garnishment returned, the same 'lands, tenements, or hereditaments, should be sold by her Majesty, 'her heirs or successors, and the money thereof coming disposed ac-'cording to the said former recited Act: And after various other enact-'ing clauses, there was a proviso to prevent sale of the lands, tene-'ments, or hereditaments of any heir, during the time of his or her 'nonage: And whereas by an Act, made in the thirty-ninth year of the 39 Eliz. c. 7. 'reign of Queen *Elizabeth*, the said recited explanatory Act of the 'twenty-seventh year of Queen *Elizabeth* was repealed, and a new 'exposition was made of the said recited statute of the thirteenth of '*Elizabeth*, with various new provisions; but the said Act of the thirty-'ninth year of *Elizabeth* being only temporary, and having expired 'early in the reign of *James* the First, the said explanatory Act of the 'twenty-seventh year of *Elizabeth* became revived and is now in force: 'And whereas it may tend greatly to facilitate and expedite the 'payment of debts to the Crown where the real estates of its ac-'countants or debtors, or of their sureties, are seized into the 'King's hands under writs of extent, if a sufficient part of such 'estates was to be sold under the provisions of the said recited 'Acts of the thirteenth and twenty-seventh year of Queen *Eliza-'beth*, but the said Acts have not been lately put in use, and in-'convenience is likely to arise if the mode of sale therein directed 'should be pursued;' be it therefore declared and enacted by the

Court of Exchequer, on application of the Attorney-general, may order the estate of any debtor to his Majesty, &c. to be sold.

King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful to and for his Majesty's Court of Exchequer, and the same court is hereby authorised, on the application of his Majesty's Attorney-general in a summary way, by motion to the same court, to order that the right, title, estate, and interest of any debtor to his Majesty, his heirs and successors, and the right, title, estate, and interest of the heirs and assigns of such debtor, in any lands, tenements, or hereditaments, which have been, or shall hereafter be extended under and by virtue of any such writ of extent or *diem clausit extremum* as aforesaid, or so much thereof as shall be sufficient to satisfy the debt for which the same shall have been so extended, shall be sold in such manner as the said court shall direct; and that when a purchaser or purchasers shall be found, the conveyance of the lands, tenements, or hereditaments so decreed to be sold, shall be made to the purchaser or purchasers by his Majesty's remembrancer in the said Court of Exchequer, or his deputy, under the direction of the said court, by a deed of bargain and sale, to be inrolled in the same court; and that, from and after the making of such conveyance, and the inrolment thereof as aforesaid, the bargainee or bargainees in such conveyance, and his or their heirs, executors, administrators, and assigns, shall have,

No. XVII. 25 Geo. III. c. 35.

hold, and enjoy the lands, tenements, and hereditaments therein comprised, for his and their own respective use and benefit, not only against the extent of the Crown, but also against such debtor of the Crown, or the surety or sureties for such debtor, and all persons claiming under such debtor, or the surety or sureties, unless by a title paramount to, and available in law against such extent as aforesaid; and all monies which shall become payable from any such purchaser or purchasers as aforesaid, shall be paid, accounted for, and applied towards discharge of the debt due to the Crown, and of all costs and expenses which shall be incurred by the Crown in enforcing the payment of such debt, in such manner as the said Court of Exchequer shall from time to time order and appoint: And if, after payment of the whole debt to the Crown, and of all costs and expenses incurred in enforcing the payment thereof, there shall be any surplus of the monies arising from any such sale, the said surplus shall belong to the same person or persons as would be entitled to the lands, tenements, or hereditaments sold, if there had not been a sale thereof, and shall accordingly be paid to such person or persons, under the order and direction of the said court of Exchequer, upon motion or petition to the said court, to be made upon such notice to the Crown, and to be supported by such affidavits or other proofs, as to the said court shall from time to time seem just and reasonable.

The surplus, if any, after payment of debt and costs, to be paid to the persons intitled thereto.

'II. And whereas, from the want of the deeds and writings relative 'to the title of such lands, tenements, and hereditaments, as the 'said Court of Exchequer may decree to be sold under this Act, 'difficulties may arise in the execution hereof,' be it therefore further enacted, That it shall be lawful for the said Court of Exchequer, from time to time, to make such order touching the production, delivery, and custody of such title deeds and writings as aforesaid, in the same manner as if a decree had been made by the said court for a sale of the lands of a Crown debtor, in execution of a trust created for payment of debts by such Crown debtor himself.

Court of Exchequer may make an order for the production of title deeds.

[No. XVIII.] 25 George III. c. 52.—An Act for better examining and auditing the Public Accounts of this Kingdom.

[No. XIX.] 39 George III. c. 83.—An Act for transferring to the Commissioners for auditing the Public Accounts, the Duties now performed in the Offices of the Auditors of the Land Revenue; and for directing the Mode of attesting the Accounts of the Paymaster-General of His Majesty's Forces.—[12*th July* 1799.]

[No. XX.] 39 and 40 George III. c. 54.—An Act for more effectually charging Public Accountants with the Payment of Interest; for allowing Interest to them in certain Cases; and for compelling the Payment of Balances due from them. — [20*th June* 1800.]

[No. XXI.] 41 George III. c. 90.—An Act for the

more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same.—[*2d July* 1801.]

No. XXI. 41 Geo. III. c. 90.

'FOR the more speedy and effectual recovery of debts due to his Majesty, his heirs and successors, in right of the Imperial 'Crown of this realm, and for the better administration of justice 'within the same;' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, in all cases where, upon any account duly audited, declared, or recorded in his Majesty's court of Exchequer in that part of the United Kingdom of *Great Britain* and *Ireland* called *England*, or upon any judgment or decree of the same Court of Exchequer, any debt or duty shall be due to his Majesty, his heirs and successors, a copy of such declared account, judgment, or decree, shall, upon application to the said court, made on behalf of his majesty, his heirs and successors, be forthwith exemplified and transmitted, under the seal of the said Court of Exchequer, to his Majesty's Court of Exchequer in that part of the said United Kingdom called *Ireland*; which said last mentioned court shall, upon the said copy so exemplified being laid before them, forthwith cause the same to be inrolled in the Rolls of the said Court of Exchequer in *Ireland*; and upon the same being so inrolled, the said Court shall cause process to issue for levying and recovering the debt due on such declared account, or for which such judgment or decree shall have been so obtained, as well against the person of the debtor upon such declared account, or against whom such judgment or decree shall have been so obtained, as against his real and personal estate, situate, lying, and being in that part of the United Kingdom called *Ireland*, as fully and effectually to all intents and purposes as by the course and practice of his Majesty's Court of Exchequer in that part of the said United Kingdom called *England* is or may be now awarded and issued by the same court.

When, upon any account declared or recorded in the Court of Exchequer in England, or on judgment of that Court, any debt shall be due to his Majesty, a copy of such account, &c. shall on application be exemplified and transmitted to the Exchequer courtinIreland, where it shall be inrolled, and process issued against the debtor's body and effects there.

II. And be it further enacted, That the sheriff or other proper officer to whom such process shall be so directed, shall be compelled to account to the said Court of Exchequer for the due execution of such process; and the chancellor and barons of the said Court shall take care that all monies levied by virtue of such process shall be duly paid into the receipt of the Exchequer in *Ireland*, and the Lord High Treasurer of *Ireland*, or Lords Commissioners for executing the office of Lord High Treasurer therein, shall, so soon as conveniently may be, cause the same to be remitted and paid into the receipt of the Exchequer, in that part of the United Kingdom called *England*.

Sheriff shall account for execution of the process; and the money levied shall be paid into the Irish Exchequer, and remitted to the English Exchequer.

III. And be it further enacted, That from and after the passing of this Act, in all the cases where, upon any such declared account duly recorded in his Majesty's Court of Exchequer in that part of the United Kingdom of *Great Britain* called *Ireland*, or upon any judgment or decree obtained in the said Court of Exchequer in *Ireland*, any debt shall be due to his Majesty, his heirs and successors, a copy of such declared account, judgment, or decree, shall, upon application to the said court made on behalf of his Majesty, his heirs and successors, be forthwith exemplified and transmitted under the seal of the said Court of Exchequer to his Majesty's Court of Exchequer in that part of *Great Britain* called *England*; which said last mentioned Court shall, upon the said copy so exemplified being laid before them, forthwith cause the same to be inrolled in the Rolls of the said Court of Exchequer in *England*, and upon the same being so inrolled, the said court shall cause process to issue for levying and recovering the debt due upon such declared account, or for which such judgment or decree

In like manner, where on any such declared account recorded in the Court of Exchequer in Ireland, &c. any debtshallbe due to his Majesty, the same regulations shall be observed for the recovery in England.

No. XXI. 41 Geo. III. c. 90.

shall have been so obtained, as well against the person of the debtor against whom judgment or decree shall have been so obtained, as against his real and personal estate, situate, lying, and being in that part of the United Kingdom called *England*, as fully and effectually, to all intents and purposes, as by the usage and practice of his Majesty's Court of Exchequer in that part of the said United Kingdom called *Ireland*, is or may be now awarded and issued by the said court.

Sheriff shall account for the execution of the process, and money levied shall be paid into English Exchequer, and remitted to Ireland.

IV. And be it further enacted, That the sheriff or other proper officer to whom such process shall be so directed, shall be compelled to account to the said court of Exchequer for the due execution of such process, and the chancellor and barons of the said court shall take care that all monies levied by virtue of such process shall be duly paid into the receipt of the Exchequer in *England*, and the Lord High Treasurer of *England*, or Lords Commissioners for executing the office of Lord High Treasurer therein, shall, so soon as conveniently may be, cause the same to be remitted and paid into the receipt of the Exchequer of that part of the United Kingdom called *Ireland*.

Where, in any suit between party and party, or in any proceeding in cases of minors, &c. orders shall be made for payment of money, &c. by the Court of Chancery in England, a copy thereof shall be certified to the Court of Chancery in Ireland, where it shall be inrolled, and process shall be issued to enforce obedience, &c.

V. And be it further enacted, That in cases where, in any suit between party and party, or in any matter or proceeding by petition in cases of minors, bankrupts, idiots, or lunatics, any decree shall be pronounced, or any order made for payment, or for accounting for money, by the High Court of Chancery in that part of the United Kingdom called *England*, the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of *England*, for the time being respectively, shall, upon application made to him or them respectively, cause a copy of such order or decree to be exemplified and certified to the Court of Chancery in that part of the United Kingdom called *Ireland*, under the Great Seal of *England*; and the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal of *Ireland*, shall forthwith cause such order or decree, when it shall be presented to them respectively so exemplified, to be inrolled in the rolls of the High Court of Chancery in *Ireland*, and shall cause process of attachment and committal to issue against the person of the party against whom such order or decree shall have been made respectively, in order to enforce obedience to and performance of the same, as fully and effectually, to all intents and purposes, as if such order or decree had been originally pronounced in the said Court of Chancery in *Ireland*; and it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of *Ireland* for the time being, from time to time, to make orders upon petition as the occasion may require for payment of money levied under such process as aforesaid, into the bank of *Ireland*, with the privity of the accountant general of the said court, to the credit, and for the benefit of the party who shall have obtained such order or decree; and the governor and company of the bank of *Ireland* are hereby authorized and required to receive and hold all such monies, subject to the orders of the said Court of Chancery: Provided always, That no such monies shall be charged with, or subject to poundage for the usher of the said Court of Chancery in *Ireland*, when the same shall be paid out by order of the said court.

And where such orders shall be made by the Court of Chancery in Ireland, a copy thereof shall be certified to the Court of Chancery in England where it shall be inrolled; and process shall be issued to enforce obedience, &c.

VI. And be it further enacted, That in all cases where, in any suit between party and party, any decree shall be pronounced, or any order made for payment, or for accounting for money, by the High Court of Chancery in that part of the United Kingdom called *Ireland*, the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of *Ireland* for the time being respectively, shall, upon application made to him or them respectively, cause a copy of such order or decree to be exemplified and certified to the Court of Chancery in that part of the United Kingdom called *England*, under the Great Seal of *Ireland*; and the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of *England*, shall forthwith cause such order or decree, when it shall be presented to them respectively so exemplified, to be enrolled in the rolls of the High Court of Chancery in *England*, and shall cause process of attachment and com-

mittal to issue against the person of the party against whom such order or decree shall have been made respectively, in order to enforce obedience to and performance of the same, as fully and effectually, to all intents and purposes, as if such order or decree had been originally pronounced in the said Court of Chancery in *England*; and it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of *England* for the time being, from time to time, to make orders upon petition, as the occasion may require, for payment of money levied under such process as aforesaid, into the bank of *England*, with the privity of the accountant general of the said court, to the credit and for the benefit of the party who shall have obtained such order or decree; and the governor and company of the bank of *England* are hereby authorized and required to receive and hold all such monies, subject to the orders of the said Court of Chancery: Provided always, That no such monies shall be charged with or subject to poundage, when the same shall be paid out by order of the said court.

Orders for payment of money, made by the Court of Exchequer of England, shall, on application, be certified to the Court of Exchequer in Ireland, where they shall be inrolled, and process issued to enforce obedience, &c.

VII. And be it further enacted, that in all cases where, in any suit between party and party, any decree shall be pronounced, or any order made for payment, or for accounting for money, by the barons of his Majesty's Court of Exchequer, in that part of *Great Britain* called *England*, the Lord Chief Baron, or any one of the barons of the said court for the time being, shall upon application made to them respectively, cause a copy of such order or decree to be exemplified and certified to the barons of his Majesty's Court of Exchequer in that part of the United Kingdom called *Ireland*, under the seal of the said Court of Exchequer of *England*; and the barons of the said Court of Exchequer in *Ireland* shall forthwith cause such order or decree, when it shall be presented to them so exemplified, to be enrolled in the rolls of the Court of Exchequer in *Ireland*, and shall cause process of attachment and committal to issue against the person of the party against whom such order or decree shall have been made respectively, in order to enforce obedience to, and performance of the same, as fully and effectually, to all intents and purposes, as if such order or decree had been originally pronounced in the said Court of Exchequer in *Ireland*: And it shall and may be lawful to and for the barons of the Court of Exchequer in *Ireland* for the time being, from time to time, to make orders upon petition, as the occasion may require, for payment of money levied under such process as aforesaid, into the bank of *Ireland*, in the name of the deputy remembrancer of the said court, in trust for the benefit of the party who shall have obtained such order or decree; and the governor and company of the bank of *Ireland* are hereby authorized and required to receive and hold all such monies subject to the orders of the said Court of Exchequer: Provided always, that no such monies shall be charged with or subject to poundage, when the same shall be paid out by order of the said court.

And orders made by the Court of Exchequer in Ireland, shall, on application, be certified to the Court of Exchequer in England, where they shall be inrolled, and process issued to enforce obedience, &c.

VIII. And be it further enacted, That in all cases where, in any suit between party and party, any decree shall be pronounced, or any order made for payment, or for accounting for money, by the barons of his Majesty's Court of Exchequer in that part of the United Kingdom called *Ireland*, the Lord Chief Baron, or any one of the barons of the said court for the time being, shall, upon application made to them respectively, cause a copy of such order or decree to be exemplified and certified to the barons of his Majesty's Court of Exchequer in that part of the United Kingdom called *England*, under the seal of the said court of Exchequer in *Ireland*; and the barons of the said Court of Exchequer in *England*, shall forthwith cause such order or decree, when it shall be presented to them so exemplified, to be enrolled in the rolls of the Court of Exchequer in *England*, and shall cause process of attachment and committal to issue against the person of the party against whom such order or decree shall have been made respectively, in order to enforce obedience to, and performance of the same, as fully and effectually, to all intents and purposes, as if such order or decree had been originally pronounced in the said Court of Exchequer in *England*; and it shall and

No. XXI. 41 Geo. III. c. 90.

may be lawful to and for the barons of the Court of Exchequer in *England*, for the time being, from time to time, to make orders upon petition as the occasion may require, for payment of money levied under such process as aforesaid into the bank of *England*, in the name of the deputy remembrancer of the said court, in trust for the benefit of the party who shall have obtained such order or decree, and the governor and company of the bank of *England* are hereby authorized and required to receive and hold all such monies, subject to the orders of the said Court of Exchequer: Provided always, That no such monies shall be charged with or subject to poundage, when the same shall be paid out by order of the said court.

The statutes of England, and of Great Britain, printed and published by the King's printer shall be received as conclusive evidence in any court in Ireland; and the statutes of Ireland prior to the union, so printed and published, shall in like manner be evidence in any court in Great Britain.

IX. And, for the better and more effectual proof of the statute law of the kingdoms of *Great Britain* and *Ireland*, and of *England* and *Ireland*, previous to the union of the said kingdoms, in all courts of civil and criminal jurisdiction in every part of the said United Kingdom; be it enacted, That the copy of the statutes of the kingdom of *England*, and of the kingdom of *Great Britain* since the union with *Scotland*, printed and published by the printer duly authorized to print and publish the same by his Majesty, or by any of his royal predecessors, shall be received as conclusive evidence of the several statutes made and enacted prior to the union of the kingdoms of *Great Britain* and *Ireland*, by the Parliaments of *England* and *Great Britain* respectively, in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the United Kingdom called *Ireland*; and in like manner the copy of the statutes of the kingdom of *Ireland*, made and enacted by the Parliament of the same, prior to the union of the kingdoms of *Great Britain* and *Ireland*, and printed and published by the printer, duly authorized by his Majesty, or any of his royal predecessors, to print and publish the same, shall be received as conclusive evidence of the several statutes made and enacted by the Parliament of *Ireland*, prior to the union of the kingdoms of *Great Britain* and *Ireland*, in all suits, actions, or prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any court of civil or criminal jurisdiction, in that part of the United Kingdom called *Great Britain*.

[No. XXII.] 42 George III. c. 70.—An Act for directing certain public Accounts to be laid annually before Parliament, and for discontinuing certain other Forms of Account now in Use.—[22d *July*, 1802.]

[No. XXIII.] 46 George III. c. 141.—An Act for making more effectual Provision for the more speedy and regular Examination and Audit of the public Accounts of this Kingdom.—[22d *July*, 1806.]

[No. XXIV.] 47 George III. c. 39. sess. 2.—An Act for more effectually charging public Accountants with Interest upon Balances, and for other purposes relating to the passing of public Accounts.—[8th *August*, 1807.]

[No. XXV.] 48 George III. c. 58.—An Act for amending the Law with regard to the Course of Proceeding on Indictments and Informations in the Court of King's

Bench in certain Cases; * * * * * * * * * * and for requiring Officers taking Bail in the King's Suit to assign the Bail Bonds to the King.—[1st *June*, 1808.]

No. XXV. 48 Geo. III. c. 58.

Bail bonds in the King's suits shall be assigned by the sheriffs, &c.

III. AND be it further enacted, That if any person shall be arrested after the passing of this Act, by any writ of *Capias ad respondendum* issuing out of any of his Majesty's Courts of Record at *Westminster*, or out of the superior court of record of either of the counties palatine, or out of any of the courts of great sessions in *Wales*, at the suit of the King's Majesty, his heirs or successors, and the sheriff or other officer shall take bail from such person, the sheriff or other officer, at the request and costs of the prosecutor of such writ, shall assign to the King's Majesty, his heirs and successors, the bail bond taken from such bail, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so endorsed be duly stamped before any suit be commenced thereupon; and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to the King's Majesty, his heirs and successors, and the court in which such bail bond is put in suit, may by rule or rules of the same court give such relief to the defendant or defendants as is agreeable to justice and reason.

[This Act at length in Vol. VI.]

[No. XXVI.] 57 George III. c. 117.—An Act to regulate the issuing of Extents in Aid.—[11th *July*, 1817.]

57 George III. c. 117.

WHEREAS extents in aid have in many cases been issued for the levying and recovering of larger sums of money than were due to his Majesty by the debtors on whose behalf such extents were issued, and it is expedient to prevent such practice in future; and in other cases extents in aid have been issued at the instance and for the benefit of persons indebted to his Majesty by simple contract only: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That upon the issuing of every extent in aid, on behalf of any debtor to his Majesty, after the passing of this Act, his Majesty's Court of Exchequer at *Westminster*, or the Chancellor of his Majesty's Exchequer, or Lord Chief Baron or other baron of the said court, granting the fiat for the issuing of such extent in aid, shall cause the amount of the debt or sum of money due or claimed to be due to his Majesty to be stated and specified in the said fiat; and that in all cases in which the debt or debts found due to the debtor to his Majesty shall be equal to or exceed the debt stated and specified in the said fiat as aforesaid, the amount of the debt so stated and specified in the said fiat shall be indorsed upon the writ, and the writ so indorsed shall be deemed to be and be the authority and direction to the sheriff or other officer who shall execute such writ, in making his levy and executing the same, as to the amount to be levied and taken under the said writ; and that in all cases in which the debt or debts found due to the debtor to his Majesty shall be of less amount than the debt stated and specified in the said fiat as aforesaid, the amount of such debt or debts found due to such debtor to his Majesty shall be indorsed upon the writ, and the writ so indorsed shall be deemed to be and be the authority and direction to the sheriff or other officer who shall execute the said writ, in making his levy and executing the same, as to the amount to be levied and taken under the said writ; and that the money levied, taken, recovered, or received under or by virtue of every such extent in aid so prosecuted and issued, shall be, by order of the said court, paid over to and for his Majesty's use, towards satisfaction of the debt so due to his Majesty as aforesaid.

Amount of debt due to the Crown to be indorsed upon the writ, as the sum to be levied by the sheriff.

No. XXVI. 57 Geo. III. c. 117.

If any overplus, court to dispose of it upon summary application,

II. Provided always, and be it further enacted, That in every case in which the sum produced by the sale of any lands, goods, or chattels taken, or by the receipt of any sum of money by any sheriff or other officer under any such writ of extent, for the purpose of levying the amount or sum of money indorsed upon the back of the writ, shall be more than sufficient to satisfy the amount of the sum so indorsed upon the writ, such overplus shall be paid into the Court of Exchequer, together with the said amount indorsed upon the said writ; and the said court shall, upon any summary application or applications, make such order, for the return, disposal, or distribution of any such surplus, or any part or proportion thereof, as to the said court shall appear to be proper.

Not to prejudice the debtor to the crown in recovering the remainder of any debt.

III. Provided always, and be it further enacted, That nothing in this Act contained, and no seizure of any debt into the hands of his Majesty, or part recovery or payment of such debt, or other proceeding had under or in pursuance of this Act, or in relation to the applying for, obtaining, or executing any such writ, or disposing of any such overplus, shall affect or in any manner prejudice, either at law or in equity, any right, claim, or demand of the person or persons to whom such debt shall have been due or owing, when seized into his Majesty's hands, or his or their assignee or assignees, or executor or executors, or administrator or administrators, as to the remaining part of such debt, or as to the suing any person or persons against whom any such writ shall have issued, or whose lands or goods shall have been seized or taken under any such writ, for the residue or remaining part of such debt, or as to the recovery of or receiving any residue or remaining part of any debt so seized or in part levied, recovered, or paid, or any further or other debt seized or sued for under or by virtue of any such extent, but still remaining due and unpaid, either in the whole or in part; but that it shall be lawful for any person or persons as aforesaid, his or their assignee or assignees, executor or executors, or administrator or administrators, to demand, sue for, and recover the remainder of any such debt so seized, or any other debt or debts, by the like process and in the same manner as if no such extent in aid had issued; any thing contained in any Act or Acts of Parliament, or law or laws, to the contrary notwithstanding.

Extents in aid not to be sued out by simple contract debtors to the crown, &c. except in certain cases,

IV. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any person or persons, companies or societies of persons, corporate or not corporate, who shall or may be indebted to his Majesty by simple contract only; nor for any such person or persons, companies or societies, who shall or may be indebted to His Majesty by bond for answering, accounting for, and paying any particular duty or duties, or sum or sums of money, which shall arise or become due and payable to his Majesty from such person or persons, companies or societies respectively, for and in respect and in the course of his or their particular trades, manufactories, professions, businesses, or callings; nor for any subdistributor of stamps who shall have given bond to his Majesty; nor for any person who shall have given bond to his Majesty, either jointly or separately, as a surety only for some other debtor to his Majesty, until such surety shall have made proof of a demand having been made upon him on behalf of his Majesty, in consequence of the nonperformance of the conditions of the bond by the principal, and then only to the amount of the said demand; to sue out and prosecute any extent or extents in aid, by reason or on account of any such debt or debts to his Majesty respectively, for the recovery of any debt or debts due to such person or persons, companies or societies, or to such subdistributor of stamps or surety as aforesaid; and that all and every commission and commissions to find debts, extent and extents in aid, and other proceedings which shall be so issued or instituted at the instance of or for such simple contract or bond debtor or debtors respectively, and all proceedings thereupon, shall be null and void: Provided always, that nothing herein contained shall extend or be construed to extend to preclude or prevent any persons who shall or may become debtor or debtors to his Majesty by simple contract only, by

the collection or receipt of any money arising from His Majesty's revenue for His Majesty's use, from applying for and suing out any commission or commissions, extent or extents in aid, in case one or more of such persons shall be bound to His Majesty by bond or specialty of record in the said Court of Exchequer, for answering, securing, paying over, or accounting for to his Majesty, the particular duties or sums of money which shall constitute the debt that may be so then due from such person or persons to His Majesty; any thing herein-before contained to the contrary notwithstanding.

Extent in aid not to issue on Bonds for the payment of Duties against any Corporate Body, &c.

V. Provided nevertheless, and be it further enacted, That no extent in aid shall be issued on any bond given by any person or persons as a surety or sureties for the paying or accounting for any duties which may become due to His Majesty from any body or society, whether incorporated or otherwise, carrying on the business of insurance against any risques either of fire or of any other kind whatever.

Persons imprisoned under any Writ of Capias in extents in aid, may apply to the Courts of Exchequer for their Discharge.

VI. And be it further enacted, That it shall and may be lawful for any person or persons who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias* in any extent or extents in aid, to apply to the Barons of His Majesty's Court of Exchequer in *England* or *Scotland*, or to any baron of the same court in vacation, for his her or their discharge, giving one month's previous notice in writing to the person or persons to whom he she or they owed the debt or sum or sums of money for which he she or they is or are so imprisoned, at the time such debt was seized under such extent in aid of his her or their intention to make such application, and stating in such notice the ground of such application, and an enumeration and description of all and every the property debts and effects whatsoever of such person or persons in his her or their own possession or power, or in the possession or power of any other person or persons for his her or their use; and for the said court, or any such baron in vacation to whom such application shall be made, to order such person or persons to be brought before them or him to be examined upon oath touching and concerning his her or their property and effects; and if such person or persons respectively shall upon such examination make a full disclosure of all his her or their property and effects, to the satisfaction of the said court or baron, or it shall otherwise appear reasonable and proper to such court or baron that such person or persons should be no longer imprisoned under such writ, for such court or baron to order a writ of *supersedeas quoad corpus* to be issued out of the said court for the liberation of such person or persons from such imprisonment: Provided always, that no such liberation as aforesaid shall be held or deemed to satisfy or supersede such extent in aid, or any proceedings thereon, except as to such imprisonment as aforesaid, or the debt or debts seized under and by virtue thereof, and for which such person or persons shall be so imprisoned.

[No. XXVII.] 5 George IV. c. 111.—An Act to amend an Act of the Forty-first Year of the Reign of His late Majesty King *George* the Third, for the more speedy and effectual Recovery of Debts due to His Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same.—[24th *June* 1824.]

41 G. III. c. 90.

WHEREAS by an Act passed in the forty-first year of the reign of His late Majesty King *George* the Third, intituled *An Act for the more speedy and effectual Recovery of Debts due to His Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of* Great Britain *and* Ireland, *and for the better Administration of Justice within the same*, it is enacted, that in all cases wherein any suit between party and

No. XXVII. 5 Geo. IV. c. 111.

party any decree shall be pronounced or any order made for payment or for accounting for money by the High Court of Chancery in that part of the United Kingdom called *Ireland*, the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal of *Ireland* for the time being respectively, shall, upon application made to him or them respectively, cause a copy of such order or decree to be exemplified and certified to the Court of Chancery in that part of the United Kingdom called *England*, under the Great Seal of *Ireland;* and the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal of *England*, shall forthwith cause such order or decree, when it shall be prescribed to them respectively, so exemplified, to be enrolled in the Rolls of the High Court of Chancery in *England*, and shall cause process of attachment and committal to issue against the person of the party against whom such order or decree shall have been made respectively, in order to enforce obedience to and performance of the same, as fully and effectually to all intents and purposes as if such order or decree had been originally pronounced in the said Court of Chancery in *England;* and it shall and may be lawful to and for the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal of *England* for the time being, from time to time to make orders upon petition, as the occasion may require, for payment of money levied under such process as aforesaid into the Bank of *England*, with the privity of the Accountant General of the said court, to the credit and for the benefit of the party who shall have obtained such order or decree; and the Governor and Company of the Bank of *England* are by the said Act authorized and required to receive and hold all such monies, subject to the orders of the said Court of Chancery: Provided always, that no such monies shall be charged with or subject to poundage when the same shall be paid out by order of the said court: And whereas similar provisions are contained in the said Act respecting the execution in *Ireland* of decrees and orders made by the High Court of Chancery in *England*, not only in any suit between party and party, but also in any matter or proceeding by petition in cases of minors, bankrupts, idiots or lunatics; and it is expedient that the provisions of the said Act should be extended to orders in any matter or proceeding in *Ireland* by petition in cases of minors, bankrupts, idiots or lunatics: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, that on any order for payment or for accounting for money pronounced by the High Court of Chancery, or by the Lord Chancellor Lord Keeper, or Lords Commissioners for Custody of the Great Seal, or Master of the Rolls, in *Ireland*, in any matter or proceeding by petition in cases of minors, bankrupts, idiots or lunatics, it shall and may be lawful for the party obtaining the same to take such proceeding to enforce obedience to and performance of the same in that part of the United Kingdom called *England*, as in and by the said Act is enacted of and concerning decrees and orders pronounced by said Court of Chancery in *Ireland* in any suit pending between party and party; and that all such enactments advantages and provisions, as are by the said Act enacted and provided touching and respecting decrees of the Court of Chancery in *Ireland* in any suit between party and party, shall be and the same are hereby enacted and extended to all orders made by said Court of Chancery, or the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, or Master of the Rolls, in *Ireland*, for payment or for accounting for money in any matter or proceeding by petition in cases of minors, bankrupts, idiots or lunatics, to all intents and purposes, as if such orders in cases of minors, bankrupts, idiots or lunatics had been particularly stated and mentioned in the said Act.

On Order of Court of Chancery in Ireland for Payment of Money in Cases of Minors, Bankrupts, &c. the Party obtaining it may take such Proceeding to enforce Obedience thereto in England as by recited Act is provided concerning Decrees pronounced in any Suit between Party and Party.

PART IV.

CLASS XXIV.

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Ecclesiastical and Maritime Courts.

[No. I.] 13 Edward I. stat. 4.—Certain Cases wherein the King's Prohibition doth not lie.

13 Edward I. stat. 4. Cases wherein the King's Prohibition doth not lie.

'THE *King to his Justices sendeth greeting.* Use yourselves circumspectly in all matters concerning the Bishop of *Norwich* and his clergy, not punishing them if they hold pleas in court Christian of such things as be meer spiritual, that is to wit, of penance enjoined by prelates for deadly sin, as fornication, adultery, and such like, for the which sometimes corporal penance and sometimes pecuniary is enjoyned, specially if a freeman be convict of such things. Also if prelates do punish for leaving the churchyard unclosed, or for that the church is uncovered, or not conveniently decked, in which cases none other penance can be enjoyned but pecuniary.

Tithes and Offerings.

'*Item*, If a parson demand tithes greater or smaller, so that the fourth part of the value of the benefice be not demanded.

'*Item*, If a parson demand mortuaries in places where a mortuary hath been used to be given.

Pension.

'*Item*, If a prelate of a church demand of a parson a pension due to him, all such demands are to be made in a spiritual court.

Defamation.

And for laying violent hands on a clerk, and in cause of defamation, it hath been granted already, that it shall be tried in a spiritual court, when money is not demanded, but a thing done for punishment of sin. In all cases afore rehearsed, the spiritual judge shall have power to take knowledge, notwithstanding the King's prohibition.'

In omnibus istis casibus habet judex ecclesiasticus cognoscere regia prohibitione non obstante licet porrigatur ob quod impetrant laici prohibitionem in genere super decima oblationibus mortuar' redemptionibus penitentiarium violenta manuum injectione in clericum et conversum et in causa diffamationis in quibus casibus agitur ad penam canonicam capiend'.

Respondit dominus rex ad istos articulos quod in decimis obventionibus oblationibus mortuar' quando agitur ut predictum est prohibitioni non est locus. Et si clericus vel religiosus decimas suas in horreo congregatas vel alibi existentes vendiderit pro pecunia alicui et implacitetur in cur' Christianitatis locum habet regia prohibitio quia per venditiones res spirituales sunt temporales et sic transeunt decime in catallis.

Item si contentio sit de jure decimarum originem habens de jure patronatus et earum decimarum quantitas excedat quartam partem ecclesie locum habet regia prohibitio.

Item si prelatus imponat penam pecuniariam alicui pro peccato et petat illam pecuniam locum habet regia prohibitio si coram prelatis pecunia exigatur.

Item si quis manus violentas injecerit in clericum pro pace domini regis debent emende fieri coram rege pro excommunicatione vero coram episcopo et si imponatur pena corporalis quam si reus velit redimere dando prelato vel leso pecuniam potest nec in talibus locus est prohibitioni.

In diffamationibus liberorum corrigant prelati regia prohibitione non obstante licet porrigatur,

[No. II.] 24 Edward I.—In what Case a Consultation is grantable.

No. II. 24 Edward I.

"WHEREAS ecclesiastical judges have often surceased to proceed "in causes moved before them, by force of the King's writ of "prohibition, in cases wherein remedy could not be given to com- "plainants in the King's court, by any writ out of the Chancery, "whereby such plaintiffs were deferred of their right and remedy in "both courts, as well temporal as spiritual, to their great damage, like "as the King hath been advertised by the grievous complaint of his "subjects:" 'Our Lord the King willeth and commandeth, That where 'ecclesiastical judges do surcease in the aforesaid cases, by the King's 'prohibition directed unto them, that the chancellor or the chief justice 'of our Lord the King for the time being, upon sight of the libel of the 'same matter, at the instance of the plaintiff (if they can see that the 'case cannot be redressed by any writ out of the Chancery, but that the 'spiritual court ought to determine the matters) shall write to the 'ecclesiastical judges, before whom the cause was first moved, that 'they proceed therein, notwithstanding the King's prohibition directed 'to them before.'

[No. III.] 9 Edward II. stat. 1.—De diversis Libertatibus Clero concessis.

"THE King to all to whom, &c. sendeth greeting. Understand ye, "That whereas of late times of our progenitors sometimes Kings "of *England*, in divers their parliaments, and likewise after that we had "undertaken the governance of the realm, in our parliaments many "articles containing divers grievances (committed as therein was said "against the Church of *England*, the prelates and clergy) were pro- "pounded by the prelates and clerks of our realm; and further, great "instance was made that convenient remedy might be provided therein: "And of late in our Parliament holden at *Lincoln*, the ninth year of our "reign, we caused the articles underwritten, with certain answers made "to some of them heretofore, to be rehearsed before our council, and "made certain answers to be corrected; and to the residue of the "articles underwritten, answers were made by us and our council; "of which said articles, with the answers of the same, the tenors here "ensue."

9 Edward II. stat. 1.

(A) c. 1.—No Prohibition shall be granted where Tythes be demanded, where Money is paid for them.

"FIRST, whereas laymen do purchase prohibitions generally upon "tythes, obventions, oblations, mortuaries, redemption of penance, "violent laying hands on clerks or converts, and in cases of defama- "tion, in which cases spiritual penance ought to be enjoined;" 'the 'King doth answer to this article, That in tythes, oblations, obventions, 'mortuaries (when they are propounded under these names) the King's 'prohibition shall hold no place, although for the long withholding of 'the same, the money may be esteemed at a sum certain. But if a 'clerk or a religious man do sell his tythes being gathered in his barn, 'or otherwise, to any man for money, if the money be demanded before 'a spiritual judge, the King's prohibition shall lie; for by the sale the 'spiritual goods are made temporal, and the tythes turned into chattels.'

9 Edward II. stat. 1. c. 1.

(B) c. 2.—Debate upon the Right of Tythes exceeding the Fourth Part. Enjoining Penance Corporal or Pecuniary.

No. III. 9 Edward II. stat. 1. c. 2.

'ALSO if debate do arise upon the right of tythes, having his original from the right of the patronage, and the quantity of the same tythes do come unto the fourth part of the goods of the Church, the King's prohibition shall hold place, if the cause come before a judge spiritual. Also if a prelate enjoin a penance pecuniary to a man for his offence, and it be demanded, the King's prohibition shall hold place. But if prelates enjoin a penance corporal, and they which be so punished will redeem upon their own accord such penances by money, if money be demanded before a judge spiritual, the King's prohibition shall hold no place.'

(C) c. 3.—Laying violent Hands upon a Clerk. Excommunication for Penance Corporal.

9 Edward II. stat. 1. c. 3.

'MOREOVER, if any lay violent hands on a clerk, the amends for the peace broken shall be before the King, and for the excommunication before a prelate, that penance corporal may be enjoined; which if the offender will redeem of his own good will, by giving money to the prelate, or to the party grieved, it shall be required before the prelate and the King's prohibition shall not lie.'

(D) c. 4.—Prelates may correct for Defamation.

9 Edward II. stat. 1. c. 4.

'IN defamations also prelates shall correct in manner abovesaid, the King's prohibition notwithstanding.'

(E) c. 5.—No Prohibition where Tithe is demanded of a new Mill.

9 Edward II. stat. 1. c. 5.

"ALSO if any do erect in his ground a mill of new, and after the parson of the same place demandeth tithe for the same, the King's prohibition doth issue in this form: Quia de tali molendino hactenus decimæ non fuerunt solutæ, prohibemus, &c. et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino." The Answer. 'In such case the King's prohibition was never granted by the King's assent, nor never shall, which hath decreed that it shall not hereafter lie in such cases.'

(F) c. 6.—Where a Suit for one Offence may be prosecuted both in Court Spiritual and Temporal.

9 Edward II. stat. 1. c. 6.

"ALSO if any cause or matter, the knowledge whereof belongeth to a court spiritual, and shall be definitively determined before a spiritual judge, and doth pass into a judgment, and shall not be suspended by an appeal; and after, if upon the same thing a question is moved before a temporal judge between the same parties, and it be proved by witness or instruments, such an exception is not to be admitted in a temporal court." The answer. 'When any one case is debated before judges spiritual and temporal (as above appeareth upon the case of laying violent hands on a clerk) it is thought, that notwithstanding the spiritual judgment, the King's court shall discuss the same matter as it shall deem expedient.'

(G) c. 7.—In what only Case the King's Letters shall be sent to discharge an Excommunicate.

9 Edward II. stat. 1. c. 7.

"ALSO the King's letter directed unto ordinaries, that have wrapped those that be in subjection unto them in the sentence of excommunication, that they should assoil them by a certain day, or else that

No. III. 9 Edward II. st. 1. c. 7.

"they do appear, and shew wherefore they have excommunicated "them." The Answer. 'The King decreeth, That hereafter no such "letters shall be suffered to go forth, but in case where it is found that "the King's liberty is prejudiced by the excommunication.'

(H.) c. 8.—Clerks in the King's Service shall be discharged of their Residence, but shall be corrected by the Ordinary.

(I) c. 9.—Distresses shall not be taken in the Highways, nor in the ancient Fees of the Church.

(J.) c. 10.—They that abjure the Realm shall be in peace so long as they be in the Church or Highway.

(K) c. 11.—Religious Houses shall not be charged by Compulsion with Corrodies, Pensions, Resort, or taking of their Horses or Carts.

(L) c. 12.—A Clerk excommunicate may be taken out of the Parish where he dwelleth.

9 Edward II. stat. 1. c. 12.

"ALSO if any of the King's tenure be called before their ordinaries "out of the parish where they continue, if they be excommuni- "cate for their manifest contumacy, and after forty days a writ goeth "out to take them, they pretend their privilege that they ought not to "be cited out of the town and parish where their dwelling is; and so "the King's writ that went out for to take them is denied." *The answer.* 'It was never yet denied, nor shall be hereafter.'

(M.) c. 13.—The Examination of a Parson presented to a Benefice belongeth to a Spiritual Judge.

9 Edward II. stat. 1. c. 13.

"ALSO it is desired that spiritual persons, whom our Lord the King "doth present unto benefices of the church (if the bishop will "not admit them either for lack of learning, or for other cause rea- "sonable) may not be under the examination of lay persons in the cases "aforesaid, as it is now attempted, contrary to the decrees canonical, "but that they may sue unto a spiritual judge for remedy, as right "shall require." *The Answer.* 'Of the ability of a parson presented 'unto a benefice of the church, the examination belongeth to a spi- 'ritual judge, and so it hath been used heretofore, and shall be here- 'after.'

(N.) c. 14.—There shall be free Election of Dignities of the Church.

(O.) c. 15.—A Clerk fleeing into the Church for Felony, shall not be compelled to abjure.

(P.) c. 16.—The Privilege of the Church being demanded

No. III. 9 Edw. II. st. 1. c. 16.

by the Ordinary, shall not be denied to a Clerk that hath confessed Felony.

[No. IV.] 1 Edward III. st. 2. c. 2.—How every Person may use his Woods within the Forest. Seising of Bishops' Temporalties.

[No. V.] 18 Edward III. st. 3. c. 6.—Temporal Justices shall not enquire of Process awarded by Spiritual Juries.

18 Edward III. st. 3. c. 6.

"ITEM, Whereas commissions be newly made to divers justices, that "they shall make enquiries upon judges of holy church whether "they made just process or excessive in causes testamentary, and other, "which notoriously pertaineth to the cognizance of holy church, the "said justices have enquired and caused to be indicted, judges of holy "church, in blemishing of the franchise of holy church;" 'that such 'commissions be repealed, and from henceforth defended, saving the 'article in eyre, such as ought to be.'

[No. VI.] 50 Edward III. c. 4.—No Prohibition shall be allowed after Consultation duly granted.

50 Edward III. c. 4.

'ITEM, It is ordained and stablished of the said assent, That whereas 'a consultation is once duly granted upon a prohibition made to a 'judge of the holy church, that the same judge may proceed in the cause 'by virtue of the same consultation, notwithstanding any other prohi-'bition thereupon to him delivered: Provided always, that the matter 'in the libel of the said cause be not engrossed, enlarged, or otherwise 'changed.'

[No. VII.] 1 Richard II. c. 13.—Ecclesiastical Judges shall not be vexed for Suits for Tithes in a Spiritual Court.

1 Richard II. c. 13.

"ITEM, the prelates and clergy of this realm do greatly complain "them, for that the people of holy church, pursuing in the spi-"ritual court for their tithes, and their other things, which of right "ought, and of old times were wont to pertain to the same spiritual "court, and that the judges of holy church, having cognizance in such "cases, and other persons thereof meddling according to the law, be "maliciously and unduly for this cause indicted, imprisoned, and by "secular power horribly oppressed, and also enforced with violence by "oaths and grievous obligations, and many other means unduly com-"pelled to desist and cease utterly of the things aforesaid, against the "liberties and franchises of holy church." 'Wherefore it is assented, 'That all such obligations made or to be made by duress or violence, 'shall be of no value. And as to those that by malice do procure such 'indictments, and to be the same indictors, after the same indictees be 'so acquit, such procurers shall have and incur the same pain that is 'contained in the statute of *Westminster* the second, of those which 'procure false appeals to be made. And the justices of assizes, or 'other justices, before whom such indictees shall be acquit, shall have 'power to inquire of such procurers and indictors, and duly to punish 'them according to their desert.'

The penalty of those which do procure such indictments.

[No. VIII.] 1 Richard II. c. 14.—In an Action of

Goods taken away, the Defendant maketh Title for Tithes due to the Church.

No. VIII. 1 Richard II. c. 14.

'ITEM, It is accorded, That at what time that any person of the holy 'church be drawn in plea in the secular court for his own tithes 'taken, by the name of goods taken away, and he which is so drawn in 'plea maketh an exception, or allegeth that the substance and suit of 'the business is only upon tithes due of right and of possession to his 'church, or to another his benefice, that in such case the general aver- 'ment shall not be taken without shewing specially how the same was 'his lay-chattel.'

[No. IX.] 13 Richard II. st. 1. c. 5.—What Things the Admiral and his Deputy shall meddle.

"ITEM, Forasmuch as a great and common clamour and complaint "hath been oftentimes made before this time, and yet is, for that "the admirals and their deputies hold their sessions within divers places "of this realm, as well within franchise as without, accroaching to "them greater authority than belongeth to their office, in prejudice of "our Lord the King, and the common law of the realm, and in dimi- "nishing of divers franchises, and in destruction and impoverishing of "the common people;" 'It is accorded and assented, That the admi- 'rals and their deputies shall not meddle from henceforth of any thing 'done within the realm, but only of a thing done upon the sea, as it 'hath been used in the time of the noble Prince King *Edward*, grand- 'father of our Lord the King that now is.'

13 Richard II. st. 1. c. 5.

[No. X.] 15 Richard II. c. 3.—In what Places the Admiral's Jurisdiction doth lie.

"ITEM, At the great and grievous complaint of all the commons "made to our Lord the King in this present Parliament, for that "the admirals and their deputies do incroach to them divers jurisdic- "tions, franchises, and many other profits pertaining to our Lord the "King, and to other Lords, cities and boroughs, other than they were "wont or ought to have of right, to the great oppression and impover- "ishment of all the commons of the land, and hindrance and loss of "the King's profits, and of many other lords, cities, and boroughs "through the realm;" 'It is declared, ordained, and established, That 'of all manner of contracts, pleas and quarrels, and all other things 'rising within the bodies of the counties, as well by land as by water, 'and also of wreck of the sea, the admiral's court shall have no man- 'ner of cognizance, power, nor jurisdiction; but all such manner of 'contracts, pleas, and quarrels, and all other things rising within the 'bodies of counties, as well by land as by water, as afore, and also 'wreck of the sea, shall be tried, determined, discussed, and remedied 'by the laws of the land, and not before nor by the admiral, nor his 'lieutenant in any wise. Nevertheless, of the death of a man, and of a 'maihem done in great ships, being and hovering in the main stream 'of great rivers, only beneath the *bridges* of the same rivers nigh to the 'sea, and in none other places of the same rivers, the admiral shall 'have cognizance, and also to arrest ships in the great flotes for the 'great voyages of the King and of the realm; saving always to the King 'all manner of forfeitures and profits thereof coming: And he shall 'have also jurisdiction upon the said flotes, during the said voyages 'only, saving always to the lords, cities, and boroughs their liberties 'and franchises.'

15 Richard II. c. 3.

[No. XI.] 2 Henry IV. c. 11.—A Remedy for him who is wrongfully pursued in the Court of Admiralty.

No. XI. 2 Henry IV. c. 11.

The statute of 13 R. 2. st. 1. c. 5. confirmed, touching the admiral's jurisdiction.

"ITEM, Whereas in the statute made at *Westminster* the thirteenth "year of the said King *Richard*, amongst other things it is contained, "That the admirals and their deputies shall not intermeddle from "thenceforth of any thing done within the realm, but only of a thing "done upon the sea, according as it hath been duly used in the time of "the noble King *Edward*, grandfather to the said King *Richard*;" 'our 'said Lord the King will and granteth, That the said statute be firmly 'holden and kept, and put in due execution. And moreover, the same 'our Lord the King, by the advice and assent of the Lords Spiritual and 'Temporal, and at the prayer of the said Commons, hath ordained and 'stablished, That as touching a pain to be set upon the admiral, or his 'lieutenant, that the statute and the common law be holden against 'them; and that he that feeleth himself grieved against the form of the 'said statute, shall have his action by writ grounded upon the case 'against him that doth so pursue in the admiral's court; and recover 'his double damages against the pursuant; and the same pursuant shall 'incur the pain of ten pounds to the King for the pursuit so made, if 'he be attainted.'

[No. XII.] 2 Henry V. stat. 1. c. 3.—A Copy of the Libel in the Spiritual Court shall be delivered.

2 Henry V. st. 1. c. 3.

"ITEM, Forasmuch as divers of the King's liege people be daily "cited to appear in the spiritual court before spiritual judges, there "to answer to divers persons, as well of things which touch freehold, "debt, trespasses, covenants, and other things whereof the cognizance "pertaineth to the court of our Lord the King, as of matrimony and "testament; and when such persons so cited appear and demand a libel "of that which against them is surmised, to be informed to give their "answer thereunto, or otherwise to purchase a writ of our Lord the "King, of prohibition, according to their case, which libel to them is "denied by the said spiritual judges, to the intent that such persons "should not be aided by any such writ, against the law, and to the "great damage of such persons so impleaded;" 'Our said Lord the 'King, by the advice and assent of the Lords Spiritual and Temporal, 'and at the request and instance of the said Commons, hath ordained 'and established, That at what time the libel is grantable by the law, 'that it may be granted and delivered to the party without any diffi-'culty.'

[No. XIII.] 23 Henry VIII. c. 9.—An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain cases.

23 Henry VIII. c. 9.

'WHERE great number of the King's subjects, as well men, wives, 'servants, as other the King's subjects dwelling in divers dioceses 'of this realm of *England* and of *Wales*, heretofore have been at many 'times called by citations, and other processes compulsory, to appear 'in the Arches' Audience, and other high courts of the archbishops of 'this realm, far from and out of the diocese where such men, wives, 'servants, and other the King's subjects been inhabitant and dwelling, 'and many times to answer to surmised and feigned causes, and suits of 'defamation, withholding of tithes, and such other like causes and 'matters, which have been sued more for malice and for vexation than 'for any just cause of suit.

No person shall be cited out of the diocese where he dwelleth, but in certain cases.

'II. And where certificate hath been made by the summoner, appa-'rator, or any such light literate person, that the party against whom 'any such citation hath been awarded, hath been cited or summoned, 'and thereupon the same party, so certified to be cited or summoned, 'hath not appeared according to the certificate, the same party there-'fore hath been excommunicated, or at the least suspended from all

No. XIII. 23 H. VIII. c. 9.

'divine service; and thereupon, before that he or she could be absolved, 'hath been compelled, not only to pay the fees of the court whereunto 'he or she was so called by citation or other process, amounting to the 'sum of *ii.s.* or *xx.d.* at the least; but also to pay to the summoner, 'apparator, or other light literate person, by whom he or she was so 'certified to be summoned, for every mile being distant from the place 'where he or she then dwelled, unto the same court whereunto he or 'she was so cited or summoned to appear, *ii.d.* to the great charge and 'impoverishment of the King's subjects, and to the great occasion of 'misbehaviour and misliving of wives, women, and servants, and to 'the great impairment and diminution of their good names and ho-'nesties:' Be it therefore enacted by the King our sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, That no manner person shall be from henceforth cited or summoned, or otherwise called to appear by himself or herself, or by any procurator, before any ordinary, archdeacon, commissary, official, or any other judge spiritual out of the diocese, or peculiar jurisdiction where the person which shall be cited, summoned, or otherwise (as is aforesaid) called, shall be inhabiting and dwelling, at the time of awarding, or going forth of the same citation or summons; except that it shall be for, in, or upon any of the cases or causes hereafter written; that is to say, for any spiritual offence or cause committed or done, or omitted, forslewed, or neglected to be done, contrary to right or duty, by the bishop, archdeacon, commissary, official, or other persons having spiritual jurisdiction, or being a spiritual judge, or by any other person or persons within the diocese, or other jurisdiction whereunto he or she shall be cited, or otherwise lawfully called to appear and answer.

III. And except also it shall be by or upon matter or cause of appeal, or for other lawful cause, wherein any party shall find himself or herself grieved or wronged by the ordinary judge or judges of the diocese or jurisdiction, or by any of his substitutes, officers or ministers, after the matter or cause there first commenced, and begun to be shewed unto the archbishop or bishop, or any other having peculiar jurisdiction, within whose province the diocese or place peculiar is; or in case that the bishop or other immediate judge or ordinary dare not, nor will not convent the party to be sued before him; or in case that the bishop of the diocese, or the judge of the place within whose jurisdiction, or before whom the suit by this Act should be commenced and prosecuted, be party directly or indirectly to the matter or cause of the same suit; or in case that any bishop, or any inferior judge having under him jurisdiction in his own right and title, or by commission, make request or instance to the archbishop, bishop, or other superior ordinary or judge, to take, treat, examine, or determine the matter before him, or his substitutes, and that to be done in cases only where the law civil or canon doth affirm execution of such request, or instance of jurisdiction to be lawful or tolerable: upon pain of forfeiture to every person by any ordinary, commissary, official, or substitute, by virtue of his office, or at the suit of any person to be cited, or otherwise summoned, or called contrary to this Act, of double damages and costs for the vexation in that behalf sustained, to be recovered against any such ordinary, commissary, archdeacon, official, or other judge, as shall award or make process, or otherwise attempt or procure to do any thing contrary to this Act, by action of debt, or action upon the case, according to the course of the common law of this realm in any of the King's high courts, or in any other competent temporal court of record, by original writ of debt, bill, or plaint; in which action, no protection, other than such as shall be made under the King's great seal, and signed with his sign manual, shall be allowed, neither any wager of law, nor essoin shall be admitted; and upon pain of forfeiture for every person so summoned, cited, or otherwise called (as is abovesaid) to answer before any spiritual judge out of the diocese, or other jurisdiction where the said person so dwelleth, or is resident or abiding, *x.li.* sterling; the one

The forfeit of an ordinary offending against the purport of this statute.

No. XIII. 23 H. VIII. c. 9.

half thereof to be to the King our Sovereign Lord, and the other half to any person that will sue for the same in any of the King's said courts, or in any other the said temporal courts, by writ, information, bill, or plaint; in which action no protection shall be allowed, nor wager of law or essoin shall be admitted.

IV. Provided always, That it shall be lawful to every archbishop of this realm to call, cite, and summon any person or persons inhabiting or dwelling in any bishop's diocese within his province, for causes of heresy, if the bishop or other ordinary immediate thereunto consent, or if that the same bishop, or other immediate ordinary or judge do not his duty in punishment of the same.

Proviso for the probate of testaments in the province of Canterbury.

V. Provided also, That this Act shall not extend in any wise to the prerogative of the Most Reverend Father in God the Archbishop of *Canterbury*, or any of his successors, of or for calling any person or persons out of the diocese where he or they be inhabiting, dwelling, or resident, for probate of any testament or testaments; any thing in this Act contained to the contrary notwithstanding.

The fees for the seal of a citation.

VI. And be it further enacted by authority aforesaid, That no archbishop, nor bishop, ordinary, official, commissary, or any other substitute or minister of any of the said archbishops, bishops, archdeacons, or other having any spiritual jurisdiction, at any time from the feast of *Easter* next coming, shall ask, demand, take, or receive of any of the King's subjects, any sum or sums of money for the seal of any citation, after the said feast to be awarded or obtained, than only *iii. d.* sterling, upon the pains and penalties before limited, contained, and expressed in this present Act, to be in like form recovered, as is aforesaid.

Proviso for the probate of testaments in the province of York.

VII. Provided always, That this Act be not in any wise hurtful or prejudicial to the Archbishop of *York*, nor to his successors, of, for, or concerning probate of testaments within his province and jurisdiction, by reason of any prerogative; any thing in this Act to the contrary thereof notwithstanding.

[No. XIV.] 24 Henry VIII. c. 12.—For the Restraint of Appeals.

24 Henry VIII. c. 12.

'WHERE by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of *England* is an empire, and so hath been accepted in the World, governed by one supreme Head and King, having the dignity and royal estate of the Imperial Crown of the same; unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spiritualty and temporalty, been bounden and owen to bear, next to God, a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurge or begin within the limits thereof, without restraint, or provocation to any foreign princes or potentates of the World; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and shewed by that part of the said body politic, called the spiritualty, now being usually called the *English* church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity and sufficiency of number, it hath been always thought, and is also at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister af-

The power, pre-eminence, and authority of the King of England.

The power, learning and wisdom of the body spiritual.

'fection, the King's most noble progenitors, and the antecessors of the 'nobles of this realm, have sufficiently endowed the said church, both 'with honour and possessions; and the laws temporal, for trial of pro- 'perty of lands and goods, and for the conservation of the people of 'this realm in unity and peace, without rapine or spoil, was and yet s 'administered, adjudged and executed by sundry judges and ministers 'of the other part of the said body politic, called the temporalty; and 'both their authorities and jurisdictions do conjoin together in the due 'administration of justice, the one to help the other.

'II. And whereas the King, his most noble progenitors, and the no- 'bility and commons of this said realm, at divers and sundry Parlia- 'ments, as well in the time of King *Edward* the First, *Edward* the 'Third, *Richard* the Second, *Henry* the Fourth, and other noble Kings 'of this realm, made sundry ordinances, laws, statutes, and provisions 'for the entire and sure conservation of the prerogatives, liberties and 'pre-eminences of the said Imperial Crown of this Realm, and of the 'jurisdiction Spiritual and Temporal of the same, to keep it from the 'annoyance as well of the see of *Rome*, as from the authority of other 'foreign potentates, attempting the diminution or violation thereof, as 'often, and from time to time, as any such annoyance or attempt might 'be known or espied: And notwithstanding the said good statutes 'and ordinances made in the time of the King's most noble progenitors 'in preservation of the authority and prerogative of the said Imperial 'Crown, as is aforesaid; yet nevertheless sithen the making of the said 'good statutes and ordinances divers and sundry inconveniencies and 'dangers, not provided for plainly by the said former acts, statutes 'and ordinances, have arisen and sprung by reason of appeals sued 'out of this realm to the see of *Rome*, in causes testamentary, causes 'of matrimony and divorces, right of tithes, oblations and obventions, 'not only to the great inquietation, vexation, trouble, costs and charges 'of the King's Highness, and many of his subjects, and resiants of this 'his realm, but also to the great delay and let of the true and speedy 'determination of the said causes, for so much as the parties appealing 'to the said court of *Rome* most commonly do the same for the delay 'of justice. And forasmuch as the great distance of way is so far out 'of this realm, so that the necessary proofs, nor the true knowledge of 'the cause, can neither there be so well known, ne the witnesses there 'so well examined, as within this realm, so that the parties grieved by 'means of the said appeals be most times without remedy:' In consi- deration whereof, the King's Highness, his nobles and commons, con- sidering the great enormities, dangers, long delays and hurts, that as well to his Highness, as to his said nobles, subjects, commons, and re- siants of this his realm, in the said causes testamentary, causes of matri- mony and divorces, tithes, oblations and obventions, do daily ensue, doth therefore by his royal assent, and by the assent of the Lords Spi- ritual and Temporal, and the Commons, in this present Parliament as- sembled, and by authority of the same, enact, establish and ordain, That all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations and obventions (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertaineth to the spiritual jurisdiction of this realm) already commenced, moving, depending, being, happening, or hereafter coming in contention, debate or question within this realm, or within any the King's dominions, or marches of the same, or elsewhere, whether they concern the King our Sovereign Lord, his heirs and successors, or any other subjects or resiants within the same, of what degree soever they be, shall be from henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the King's jurisdiction and authority, and not elsewhere, in such courts spiritual and temporal of the same, as the natures, conditions, and qualities of the cases and matters aforesaid in contention, or hereafter happening in contention, shall require without having any respect to any custom, use or sufferance, in hindrance, let, or prejudice of the same, or to any other thing

The several inconveniences in suing of appeals to Rome.

All causes determinable by any spiritual jurisdiction shall be adjudged within the King's authority.

No. XIV. 24 H. VIII. c. 12.

used or suffered to the contrary thereof by any other manner of person or persons in any manner of wise; any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments, of what natures, names, qualities, or conditions soever they be, from the see of *Rome*, or any other foreign courts or potentates of the world, or from and out of this realm, or any other the King's dominions, or marches of the same, to the see of *Rome*, or to any other foreign courts or potentates, to the let or impediment thereof in any wise notwithstanding. And that it shall be lawful to the King our Sovereign Lord, and to his heirs and successors, and to all other subjects or resiants within this realm, or within any of the King's dominions, or marches of the same, notwithstanding that hereafter it should happen any excommengement, excommunications, interdictions, citations, or any other censures or foreign process out of any outward parts, to be fulminate, promulged, declared, or put in execution within this said realm, or in any other place or places, for any of the causes before rehearsed, in prejudice, derogation, or contempt of this said Act, and the very true meaning and execution thereof, may and shall nevertheless as well pursue, execute, have and enjoy the effects, profits, benefits and commodities of all such processes, sentences, judgments and determinations done, or hereafter to be done, in any of the said courts spiritual or temporal, as the cases shall require, within the limits, power and authority of this the King's said realm, and dominions and marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. As also, that all the spiritual prelates, pastors, ministers and curates within this realm, and the dominions of the same, shall and may use, minister, execute and do, or cause to be used, executed, ministered and done, all sacraments, sacramentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as Catholic and Christian men owen to do; any former citations, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching the causes aforesaid, from or to the see of *Rome*, or any other foreign prince or foreign courts, to the let or contrary thereof in any wise notwithstanding.

The prelates of this realm may execute all sacraments and divine service to the subjects of this realm.

III. And if any of the said spiritual persons, by the occasion of the said fulminations of any of the same interdictions, censures, inhibitions, excommunications, appeals, suspensions, summons, or other foreign citations for the causes beforesaid, or for any of them, do at any time hereafter refuse to minister, or cause to be ministred, the said sacraments and sacramentals, and other divine services, in form as is aforesaid, they shall for every such time or times that they or any of them do refuse so to do, or cause to be done, have one year's imprisonment, and to make fine and ransom at the King's pleasure.

The penalty of them who omit to do their duty.

IV. And it is further enacted by the authority aforesaid, That if any person or persons inhabiting or resiant within this realm, or within any of the King's said dominions, or marches of the same, or any other person or persons, of what estate, condition or degree soever he or they be, at any time hereafter, for or in any the causes aforesaid, do attempt, move, purchase or procure, from or to the see of *Rome*, or from or to any other foreign court or courts out of this realm, any manner of foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgments, of what nature, kind or quality soever they may be, or execute any of the same process, or do any Act or Acts to the let, impediment, hindrance or derogation of any process, sentence, judgment or determination had, made, or done, or hereafter to be had, made or done, in any courts of this realm, or the King's said dominions, or marches of the same, for any of the causes aforesaid, contrary to the true meaning of this present Act, and the execution of the same, that then every such person or persons so doing, and their fautors, comforters, abettors, procurers, executors, and counsellors, and every of them, being convict

Whosoever procureth from the see of Rome, &c. any appeals, process, sentences, &c. incur the forfeiture of premunire.

of the same, for every such default shall incur and run in the same pains, penalties and forfeitures, ordained and provided by the statute of provision, and *præmunire*, made in the sixteenth year of the right noble Prince King *Richard* the Second, against such as attempt, procure, or make provision to the see of *Rome*, or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the Crown and dignity of this realm. 16 R. 2. c. 5.

V. And furthermore, in eschewing the said great enormities, inquietations, delays, charges and expenses hereafter to be sustained in pursuing of such appeals, and foreign process, for and concerning the causes aforesaid, or any of them, do therefore by authority aforesaid, ordain and enact, That in such cases where heretofore any of the King's subjects or resiants have used to pursue, provoke, or procure any appeal to the see of *Rome*, and in all other cases of appeals, in or for any of the causes aforesaid, they may and shall from henceforth take, have and use their appeals within this realm, and not elsewhere, in manner and form as hereafter ensueth, and not otherwise; that is to say, first from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see, if in case any of the parties be grieved.

Before whom and in what courts appeals shall be sued within this realm.

VI. And in like wise if it be commenced before the bishop diocesan, or his commissary, from the bishop diocesan, or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given, to the Archbishop of the province of *Canterbury*, if it be within his province; and if it be within the province of *York*, then to the Archbishop of *York*; and so likewise to all other archbishops in other the King's dominions, as the case by order of justice shall require: and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts.

Appeals ought to be within fifteen days.

VII. And if the matter or contention for any of the causes aforesaid be or shall be commenced, by any of the King's subjects or resiants, before the archdeacon of any archbishop, or his commissary, then the party grieved shall or may take his appeal within fifteen days next after judgment or sentence there given, to the court of the arches, or audience, of the same archbishop or archbishops; and from the said court of the arches or audience, within fifteen days then next ensuing after judgment or sentence there given, to the archbishop of the same province, there to be definitively and finally determined, without any other or further process or appeal thereupon to be had or sued.

Suits commenced before an archbishop shall be determined by him without any further appeal.

VIII. And it is further enacted by the authority aforesaid, That all and every matter, cause and contention now depending, or that hereafter shall be commenced by any of the King's subjects or resiants for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said matter, cause or process shall be so commenced, definitively determined, decreed, or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence or decree, otherwise than is by this Act limited and appointed; saving always the prerogative of the archbishop and church of *Canterbury*, in all the aforesaid causes of appeals, to him and to his successors to be sued within this realm, in such and like wise as they have been accustomed and used to have heretofore.

The prerogative of the Archbishop of Canterbury saved.

Before whom an appeal shall be sued in any case touching the King.

IX. And in case any cause, matter or contention, now depending for the causes before rehearsed, or any of them, or that hereafter shall come in contention for any of the same causes, in any of the foresaid courts, which hath, doth, shall or may touch the King, his heirs or successors, Kings of this realm; that in all and every such case or cases the party grieved as before is said, shall or may appeal from any of the said courts of this realm, where the said matter, now being in contention, or hereafter shall come in contention, touching the King,

No. XIV. 24 H. VIII. c. 12.

his heirs, or successors, (as is aforesaid) shall happen to be ventilate, commenced or begun, to the spiritual prelates and other abbots and priors of the Upper House, assembled and convocate by the King's writ in the convocation being, or next ensuing within the province or provinces where the same matter of contention is or shall be begun; so that every such appeal be taken by the party grieved within fifteen days next after the judgment or sentence thereupon given or to be given; and that whatsoever be done, or shall be done and affirmed, determined, decreed and adjudged by the aforesaid prelates, abbots and priors of the Upper House of the said convocation, as is aforesaid, appertaining, concerning, or belonging to the King, his heirs and successors, in any of these foresaid causes of appeals, shall stand and be taken for a final decree, sentence, judgment, definition and determination, and the same matter, so determined, never after to come in question and debate, to be examined in any other court or courts.

X. And if it shall happen any person or persons hereafter to pursue or provoke any appeal contrary to the effect of this Act, or refuse to obey, execute and observe all things comprised within the same, concerning the said appeals, provocations, and other foreign processes to be sued out of this realm, for any the causes aforesaid, that then every such person or persons so doing, refusing, or offending contrary to the true meaning of this Act, their procurers, fautors, advocates, counsellors, and abettors, and every of them, shall incur into the pains, forfeitures, and penalties ordained and provided in the said statute made in the said sixteenth year of King *Richard* the Second, and with like process to be made against the said offenders, as in the same statute made in the said sixteenth year more plainly appeareth.

16 R. 2. c. 5.

[No. XV.] 25 Henry VIII. c. 19.—The Submission of the Clergy and Restraint of Appeals.

25 Henry VIII. c. 19.

There shall be no appeals *to* Rome, but appeals shall be according to the statute made 24 H. 8. c. 12.

III. AND be it further enacted by authority aforesaid, That from the feast of *Easter*, which shall be in the year of our Lord God 1534, no manner of appeals shall be had, provoked, or made out of this realm, or out of any of the King's dominions, to the bishop of *Rome*, nor to the see of *Rome*, in any causes or matters happening to be in contention, and having their commencement and beginning in any of the courts within this realm, or within any the King's dominions, of what nature, condition or quality soever they be of; but that all manner of appeals, of what nature or condition soever they be of, or what cause or matter soever they concern, shall be made and had by the parties aggrieved, or having cause of appeal, after such manner, form and condition, as is limited for appeals to be had and prosecuted within this realm in causes of matrimony, tythes, oblations and obventions, by a statute thereof made and established sithen the beginning of this present parliament, and according to the form and effect of the said estatute; any usage, custom, prescription, or any thing or things to the contrary hereof notwithstanding.

Appeals from the archbishops court into the Chancery.

IV. And for lack of justice at or in any the courts of the archbishops of this realm, or in any the King's dominions, it shall be lawful to the parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such appeal, a commission shall be directed under the great seal to such persons as shall be named by the King's highness, his heirs or successors, like as in case of appeal from the admiral's court, to hear and definitively determine such appeals, and the causes concerning the same. Which commissioners, so by the King's Highness, his heirs or successors, to be named or appointed, shall have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence, as the said commissioners shall make and decree, in and upon any such appeal, shall be good and ef-

fectual, and also definitive; and no further appeals to be had or made from the said commissioners for the same.

No. XV. 25 H. VIII. c. 19.

V. And if any person or persons, at any time after the said feast of *Easter*, provoke or sue any manner of appeals, of what nature or condition soever they be of, to the said bishop of *Rome*, or to the see of *Rome*, or do procure or execute any manner of process from the see of *Rome*, or by authority thereof, to the derogation or let of the due execution of this Act, or contrary to the same, that then every such person or persons so doing, their aiders, counsellors and abettors, shall incur and run into the dangers, pains and penalties contained and limited in the Act of provision and *præmunire* made in the sixteenth year of the King's most noble progenitor, King *Richard* the Second against such as sue to the Court of *Rome* against the King's crown and prerogative royal.

Premunire for suing of appeal to Rome, or executing any process from thence.

VI. Provided always, That all manner of provocations and appeals hereafter to be had, made or taken from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbies, priories, and other houses and places exempt, in such cases as they were wont or might afore the making of this Act, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the bishop of *Rome*, otherwise called Pope, or to the see of *Rome*, that in all these cases every person and persons, having cause of appeal or provocation, shall and may take and make their appeals and provocations immediately to the King's Majesty of this realm, into the Court of Chancery, in like manner and form as they used afore to do to the see of *Rome*; which appeals and provocations so made, shall be definitively determined by authority of the King's commission, in such manner and form as in this Act is abovementioned; so that no archbishop or bishop of this realm shall intermit or meddle with any such appeals, otherwise or in any other manner than they might have done afore the making of this Act; any thing in this Act to the contrary thereof notwithstanding.

Appeals from places exempt, which were to the see of Rome, shall now be into the Chancery.

[No. XVI.] 2 & 3 Edward VI. c. 13.—An Act for Payment of Tithes.

[Inserted at large, Part II. Class II. No. 6.]

[No. XVII.] 5 and 6 Edward VI. c. 4.—Against quarrelling and fighting in Churches and Churchyards.

5 and 6 Edward VI. c. 4.

'FORASMUCH as of late divers and many outrageous and barbarous behaviours and acts have been used and committed by divers ungodly and irreligious persons, by quarrelling, brawling, fraying and fighting openly in churches and churchyards:' Therefore it is enacted by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person whatsoever shall, at any time after the first day of *May* next coming, by words only, quarrel, chide or brawl in any church or churchyard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from the ministration of his office, for so long time as the said ordinary shall by his discretion think meet and convenient, according to the fault.

The penalty for striking or drawing a weapon in a church or church-yard.

II. And further it is enacted by the authority aforesaid, That if any person or persons after the said first day of *May*, shall smite or lay violent hands upon any other, either in any church or churchyard, that then *ipso facto* every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation.

The penalty for smiting in a church, &c.

No. XVII. 5 and 6 Edw. VI. c. 4.

The penalty for drawing or smiting with a weapon in the church, &c.

III. And also it is enacted by the authority aforesaid, That if any person after the said first day of *May* shall maliciously strike any person with any weapon in any church or churchyard, or after the same first day of *May* shall draw any weapon in any church or churchyard, to the intent to strike another with the same weapon, That then every person so offending, and thereof being convicted by verdict of xij. men, or by his own confession, or by two lawful witnesses, before the justices of assise, justices of *oyer* and *determiner*, or justices of peace in their sessions, by force of this Act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off. And if the person or persons so offending have none ears, whereby they should receive such punishment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron, having the letter F. therein, whereby he or they may be known and taken for fray-makers and fighters; and besides that, every such person to be and stand *ipso facto* excommunicated, as is aforesaid.

[No. XVIII.] 5 Elizabeth, c. 23.—An Act for the due Execution of the Writ *de Excommunicato Capiendo.*

5 Elizabeth, c. 23.

The order of awarding and returning the writ of excommunicato capiendo: what is to be done upon the party's appearance, and what if he cannot be found, and the cause of awarding this writ.

'FORASMUCH as divers persons offending in many great crimes and offences appertaining merely to the jurisdiction and determination 'of the ecclesiastical courts and judges of this realm are many times 'unpunished for lack and want of the good and due execution of the 'writ *de excommunicato capiendo*, directed to the sheriff of any county, 'for the taking and apprehending of such offenders: The great abuse 'whereof, as it should seem, hath grown for that the said writ is not 'returnable into any court that might have the judgment of the well-'executing and serving of the said writ according to the *contents* 'thereof; but hitherto have been left only to the discretion of the 'sheriffs and their deputies, by whose negligences and defaults for the 'most part the said writ is not executed upon the offenders as it ought 'to be: By reason whereof such offenders be greatly encouraged to 'continue their sinful and criminous life, much to the displeasure of 'Almighty God, and to the great contempt of the ecclesiastical laws of 'this realm:'

Awarding and returning of excommunicato capiendo.

II. Wherefore for the redress thereof, Be it enacted by the Queen's most excellent Majesty, with the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *May* next coming, every writ of *excommunicato capiendo* that shall be granted and awarded out of the High Court of Chancery, against any person or persons within the realm of *England*, shall be made in the time of the term, and returnable before the Queen's Highness, her heirs and successors, in the court commonly called the King's Bench, in the term next after the *teste* of the same writ; and that the same writ shall be made to contain at the least twenty days between the *teste* and the return thereof: And after the same writ shall be so made and sealed, that then the said writ shall be forthwith brought into the said Court of King's Bench, and there, in the presence of the justices, shall be opened and delivered of record to the sheriff or other officer to whom the serving and execution thereof shall appertain, or to his or their deputy or deputies: And if afterwards it shall or may appear to the justices of the same court for the time being, that the same writ so delivered of record be not duly returned before them at the day of the return thereof, or that any other default or negligence hath been used or had in the not well serving and executing of the said writ; that then the justices of the said court shall and may, by authority of this Act, assess such amerciament upon the said sheriff or other officer in whom such default shall appear, as to the discretion of the said justices shall be thought meet and convenient; which amerciament so assessed shall be estreated into the Court of Exchequer, as other amerciaments have been used.

The sheriff shall be amerced for not returning of the writ.

What shall be done with the body of the excommunicate.

III. And be it further enacted by the authority aforesaid, That the sheriff or other officer to whom such writ of *excommunicato capiendo*, or other process by virtue of this Act shall be directed, shall not in any wise be compelled to bring the body of such person or persons as shall be named in the said writ or process, into the said Court of the King's Bench, at the day of the return thereof; but shall only return the same writ and process thither, with declaration briefly how and in what manner he hath served and executed the same, to the intent that thereupon the said justices may then further therein proceed, according to the tenor and effect of this present Act.

If the sheriff return non est inventus.

First capias.

IV. And if the said sheriff or other officer to whom the execution of the said writ shall so appertain, do or shall return that the party or parties named in the said writ cannot be found within his bailiwick; that then the said justices of the King's Bench for the time being, upon every such return, shall award one writ of *capias* against the said person or persons named in the said writ of *excommunicato capiendo*, returnable in the same court in the term time, two months at least next after the *teste* thereof, with a proclamation to be contained within the said writ of *capias*, that the sheriff or other officer to whom the said writ shall be directed, in the full county court, or else at the general assizes and gaol delivery to be holden within the said county, or at a quarter sessions to be holden before the justices of the peace within the said county, shall make open proclamation ten days at the least before the return, that the party or parties named in the said writ shall, within six days next after such proclamation, yield his or their body or bodies to the gaol or prison of the said sheriff or other such officer, there to remain as a prisoner, according to the tenor and effect of the first writ of *excommunicato capiendo*, upon pain of forfeiture of ten pounds: And thereupon after such proclamation had, and the said six days passed and expired, then the said sheriff or other officer to whom such writ of *capias* shall be directed, shall make return of the same writ of *capias* into the said Court of the King's Bench, of all that he hath done in the execution thereof, and whether the party named in the said writ have yielded his body to prison or not.

Ten pounds forfeiture for not appearing upon the first capias.

V. And if upon the return of the said sheriff it shall appear, that the party or parties named in the same writ of *capias*, or any of them, have not yielded their bodies to the gaol and prison of the said sheriff or other officer according to the effect of the same proclamation; that then every such person that so shall make default, shall for every such default forfeit to the Queen's Highness, her heirs and successors, ten pounds; which shall likewise be estreated by the said justices into the said Court of Exchequer, in such manner and form as fines and amerciaments there taxed and assessed are used to be.

Second capias.

VI. And thereupon the said justices of the King's Bench shall also award forth one other writ of *capias* against the person or persons that so shall be returned to have made default, with such like proclamation as was contained in the first *capias*, and a pain of twenty pounds, to be mentioned in the said second writ and proclamation: And the sheriff or other officer to whom the said writ of second *capias* shall be so directed, shall serve and execute the said second writ in such like manner and form as before is expressed for the serving and executing of the said first writ of *capias*. And if the sheriff or other officer shall return upon the said second *capias*, that he hath made the proclamation according to the tenor and effect of the same writ, and that the party hath not yielded his body to prison according to the tenor of the said proclamation, that then the said party that so shall make default, shall for such his contempt and default forfeit to the Queen's Highness, her heirs and successors, the sum of twenty pounds; which said sum of twenty pounds the said justices of the King's Bench for the time being shall likewise cause to be estreated into the said Court of Exchequer, in manner and form aforesaid.

Twenty pound forfeiture upon the second capias.

Third capias.

VII. And then the said justices shall likewise award forth one other writ of *capias* against the said party with such like proclamation and

No. XVIII. 5 Elizabeth, c. 23.

pain of forfeiture, as was contained in the said second writ of *capias*. And the sheriff or other officer to whom the said third writ of *capias* shall be so directed, shall serve and execute the said third writ of *capias* in such like manner and form as before in this Act is expressed and declared for the serving and executing of the said first and second writs of *capias*. And if the sheriff or other officer to whom the execution of the said third writ shall appertain, do make return of the said third writ of *capias*, that the party upon such proclamation hath not yielded his body to prison according to the tenor thereof; that then every such party for every such contempt and default shall likewise forfeit to the Queen's Majesty, her heirs and successors, other xx. li. which sum of xx. li. shall likewise be estreated into the said Court of the Exchequer in manner and form aforesaid: And thereupon the said justices of the King's Bench shall likewise award forth one writ of *capias* against the said party, with like proclamation and like pain of forfeiture of xx. li. And that also the said justices shall have authority by this Act, infinitely to award such process of *capias* with such like proclamation and pain of forfeiture of xx. li. as is before limited, against the said party that so shall make default in yielding of his body to the prison of the sheriff, until such time as by return of some of the said writs before the said justices it shall and may appear, that the said party hath yielded himself to the custody of the said sheriff or other officer, according to the tenor of the said proclamation; and that the party upon every default and contempt by him made against the proclamation of any of the said writs so infinitely to be awarded against him, shall incur like pain and forfeiture of xx. li. which shall likewise be estreated in manner and form aforesaid.

Twenty pound forfeiture upon the third capias.

Awarding of capias infinitely, and xx. li. forfeit upon every of them.

VIII. And be it further enacted by the authority aforesaid, That when any person or persons shall yield his or their body or bodies to the hands of the sheriff or other officer, upon any of the said writs of *capias*, that then the same party or parties that shall so yield themselves, shall remain in the prison and custody of the said sheriff or other officer, without bail, baston or mainprize, in such like manner and form, to all intents and purposes, as he or they should or ought to have done, if he or they had been apprehended and taken upon the said writ of *excommunicato capiendo*.

The offender yielding his body shall be committed to prison.

IX. And be it further enacted by the authority aforesaid, That if any sheriff or other officer by whom the said writ of *capias* or any of them shall be returned, as is aforesaid, do make an untrue return upon any of the said writs, that the party named in the said writs hath not yielded his body upon the said proclamations, or any of them, where indeed the party did yield himself according to the effect of the same, That then every such sheriff or other officer, for every such false and untrue return shall forfeit to the party grieved and damnified by the said return, the sum of forty pounds; for the which sum of forty pounds the said party grieved shall have his recovery and due remedy by action of debt, bill, plaint or information, in any of the Queen's courts of record; in which action, bill, plaint or information, no essoin, protection or wager of law shall be admitted or allowed for the party defendant:

The forfeiture of a sheriff for a false return.

X. Saving and reserving to all archbishops and bishops, and all others having authority to certify any person excommunicated, like authority to accept and receive the submission and satisfaction of the said person so excommunicated, in manner and form heretofore used, and him to absolve and release, and the same to signify, as heretofore hath been accustomed, to the Queen's Majesty, her heirs and successors, into the High Court of Chancery; and thereupon to have such writs for the deliverance of the said person, so absolved and released, from the sheriff's custody or prison, as heretofore they or any of them had, or of right ought or gimht have had; any thing in this present statute, specified or contained to the contrary hereof in any wise notwithstanding.

The bishop's authority to receive submission, and deliver the excommunicate.

XI. Provided always, That in *Wales*, the counties palatines of *Lancaster*, *Chester*, *Durham* and *Ely*, and in the cinque ports, being jurisdictions and places exempt, where the Queen's Majesty's writ doth not

Process out of liberties where the Queen's writ runneth not.

run, and process of *capias* from thence not returnable into the said Court of the King's Bench, after any *significavit* being of record in the said Court of Chancery, the tenor of such *significavit* by *miltimus* shall be sent to such of the head officers of the said county of *Wales*, counties palatines, and places exempt, within whose offices, charge or jurisdiction the offenders shall be resiant; that is to say, to the chancellor or chamberlain for the said county palatine of *Lancaster*, and *Chester*, and for the cinque ports to the lord warden of the same, and for *Wales* and *Ely*, and the county-palatine of *Durham*, to the chief justice or justices there: And thereupon every of the said justices and officers to whom such tenor of *significavit* with *miltimus* shall be directed and delivered, shall by virtue of this estatute have power and authority to make like process to the inferior officer and officers to whom the execution of process there doth appertain, returnable before the justices there at their next sessions or courts, two months at the least after the teste of every such process: So always as in every degree they shall proceed in their sessions and courts against the offenders, as the justices of the said Court of King's Bench are limited by the tenor of this Act in term-times to do and execute.

Certain persons discharged of the penalty aforesaid.

XII. Provided also, and be it enacted, That any person at the time of any process of *capias* afore-mentioned awarded, being in prison, or out of this realm in the parts beyond the sea, or within age, or of *non sanæ memoriæ*, or woman covert, shall not incur any of the pains and forfeitures afore-mentioned, which shall grow by any return or default happening during such time of nonage, imprisonment, being beyond the sea, or *non sanæ memoriæ*: And that by virtue of this estatue, the party grieved may plead every such cause or matter in bar of and upon the distress, or other process that shall be made for levying of any of the said pains or forfeitures.

Addition according to the st. 1 H. 5. c. 5.

XIII. And that if the offender against whom any such writ of *excommunicato capiendo* shall be awarded, shall not in the same writ of *excommunicato capiendo* have a sufficient and lawful addition, according to the form of the statute of *prime* of *Henry* the Fifth, in cases of certain suits whereupon process of exigent are to be awarded: Or if in the *significavit* it be not contained, that the excommunication doth proceed upon some cause or contempt of some original matter of heresy, or refusing to have his or their child baptized, or to receive the holy communion as it is now commonly used to be received in the church of *England*, or to come to divine service now commonly used in the said church of *England*, or error in matters of religion or doctrine now received and allowed in the said church of *England*, incontinency, usury, simony, perjury in the ecclesiastical court, or idolatry; That then all and every pains and forfeitures limited against such persons excommunicate by this estatute, by reason of such writ of *excommunicato capiendo* wanting sufficient addition, or of such *significavit* wanting all the causes aforementioned, shall be utterly void in law; and by way of plea to be allowed to the party grieved.

Causes of excommunication.

Addition with a nuper.

XIV. And if the addition shall be with a *nuper* of the place, Then in every such case, at the awarding of the first *capias* with proclamation according to the form afore-mentioned, one writ of proclamation, (without any pain expressed) shall be awarded into the county where the offender shall be most commonly resiant at the time of the awarding of the said first *capias* with pain in the same writ of proclamation, to be returnable the day of the return of the said first *capias* with pain and proclamation thereupon at some one such time and court, as is prescribed for the proclamation upon the said first *capias* with pain: And if such proclamation be not made in the county where the offender shall be most commonly resiant in such cases of additions of *nuper*, That then such offender shall sustain no pain or forfeiture by virtue of this estatute, for not yielding his or her body, according to the tenor afore mentioned; any thing before specified to the contrary hereof in any wise notwithstanding.

No. XIX. 8 Elizabeth, c. 5.

[No. XIX.] 8 Elizabeth, c. 5.—For the avoiding of tedious Suits in Civil and Marine Causes.

A sentence definitive in a civil and marine cause by delegates appointed by commission shall be final.

'FOR the avoiding as well of long and tedious suits, as also of great charges and expenses in prosecuting of civil and marine causes by reason of divers appeals permitted to be made by order of the laws civil in such causes, and to the intent that as well strangers, as also others the subjects of this realm, that shall have cause of suit in those matters, may have such expedition in the same as their natures and qualities do require,' Be it enacted by the Queen's Majesty our Sovereign Lady, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That from the last day of this present Session of Parliament, all and every such judgment and sentence definitive, as shall be given or pronounced in any civil and marine cause, upon appeal lawfully to be made therein to the Queen's Majesty in her Highness Court of Chancery, by such commissioners or delegates as shall be nominated and appointed by her Majesty, her heirs or successors, by commission under the half seal, as it hath been heretofore used in such cases, shall be final, and no further appeal to be had or made from the said judgment or sentence definitive, or from the said commissioners or delegates, for or in the same; any law, usage or custom to the contrary notwithstanding. (1)

[No. XX.] 27 George III. c. 44.—An Act to prevent frivolous and vexatious Suits in Ecclesiastical Courts.

27 George III. c. 44. Preamble.

'WHEREAS it is expedient to limit the time for the commencement of certain suits in the ecclesiastical courts:' May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August*, One thousand seven hundred and eighty-seven, no suit for defamatory words shall be commenced in any of the ecclesiastical courts within *England*, *Wales*, or the town of *Berwick-upon-Tweed*, unless the same shall be commenced within six calendar months from the time when such defamatory words shall have been uttered.

Suits in ecclesiastical courts for defamatory words to be commenced within six months.

Limitation of suits in ecclesiastical courts.

II. And be it further enacted by the authority aforesaid, That no suit shall be commenced in any ecclesiastical court for fornication, or incontinence, or for striking or brawling in any church or churchyard, after the expiration of eight calendar months from the time when such offence shall have been committed; nor shall any prosecution be commenced or carried on for fornication at any time after the parties offending shall have lawfully intermarried.

[No. XXI.] 53 George III. c. 127.—An Act for the better Regulation of Ecclesiastical Courts in *England*; and for the more easy Recovery of Church Rates and Tithes. [12th *July*, 1813.]

(1) Notwithstanding this Act, there may still be a commission of review at the discretion of the crown. The application is referred to the Lord Chancellor, who hears the arguments of counsel and civilians, sitting in his own court. The ground on which the power of granting such a commission is supported is, that it was formerly granted by the Pope; and such authority as the Pope formerly exerted is now, by statutes 26 Hen. VIII. c. 1. 1 Eliz. c. 1. annexed to the crown. See 3 Bl. Com. 67. The only modern cases in which I am aware of such commission being applied for, are Matthews *v.* Warner, 4 Ves. 181; Eagleton *v.* Kingston, 8 Ves. 438. In the former it was granted, in the latter refused. In these cases a perspicuous view is taken of the ground upon which the commission should be granted or withheld.

No. XXI.
53 Geo. III.
c. 127.

'WHEREAS it is expedient that excommunication, together with all proceedings followiag thereupon, should, saving in certain 'cases, be discontinued, and that other proceedings should be substi-'tuted in lieu thereof; and that certain other regulations should be 'made in the proceedings of the ecclesiastical courts; and that more 'convenient modes of recovering tithes and chuch-rates in certain cases 'should be provided;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, excommunication, together with all proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued throughout that part of the United Kingdom of *Great Britain* and *Ireland* called *England*; and that in all causes which according to the laws of this realm are cognizable in the ecclesiastical courts, when any person or persons having been duly cited to appear in any ecclesiastical court, or required to comply with the lawful orders or decrees, as well final as interlocutory, of any such court, shall neglect or refuse to appear, or neglect or refuse to pay obedience to such lawful orders or decrees, or when any person or persons shall commit a contempt in the face of such court, no sentence of excommunication shall be given or pronounced; saving in the particular cases hereafter to be specified; but instead thereof, it shall be lawful for the judges or judge who issued out the citation, or whose lawful orders or decrees have not been obeyed, or before whom such contempt in the face of the court shall have been committed, to pronounce such person or persons contumacious and in contempt, and within ten days to signify the same in the form to this Act annexed, to his Majesty in Chancery, as hath heretofore been done in signifying excommunications; and thereupon a writ *de contumace capiendo*, in the form to this Act annexed, shall issue from the Court of Chancery, directed to the same persons to whom the writs *de excommunicato capiendo* have heretofore been directed; and the same shall be returnable in like manner as the writ *de excommunicato capiendo* hath been by law returnable heretofore, and shall have the same force and effect as the said writ; and all rules and regulations not hereby altered, now by law applying to the said writ and the proceedings following thereupon, and particularly the several provisions contained in a certain Act passed in the fifth year of Queen *Elizabeth*, intituled "An Act for the due execution of the writ *de excommunicato capiendo*," shall extend and be applied to the said writ *de contumace capiendo* and the proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper officers of the said Court of Chancery are hereby authorized and required to issue such writ *de contumace capiendo* accordingly; and all sheriffs, gaolers and other officers are hereby authorised and required to execute the same, by taking and detaining the body of the person against whom the said writ shall be directed to be executed; and upon the due appearance of the party so cited and not having appeared as aforesaid, or the obedience of the party so cited and not having obeyed as aforesaid, or the due submission of the party so having committed a contempt in the face of the court, the judges or judge of such ecclesiastical court shall pronounce such party absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler or other officer in whose custody he shall be, in the form to this Act annexed, for discharging such party out of custody, and such sheriff, gaoler or other officer shall, on the said order being shewn to him, so soon as such party shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him.

Excommunication discontinued, except in certain cases.

Same as in writ de excommunicato capiendo.

5 Eliz. c. 23.

II. Provided always, and be it further enacted, That nothing in this Act contained shall prevent any ecclesiastical court from pronouncing or declaring persons to be excommunicate in definitive sentences, or in interlocutory decrees having the force and effect of definitive sentences,

In what cases excommunication shall continue.

No. XXI. 53 Geo. III. c. 127.

such sentences or decrees being pronounced as spiritual censures for offences of ecclesiastical cognizance, in the same manner as such court might lawfully have pronounced or declared the same, had this Act not been passed.

Proceedings in case of excommunication.

III. And be it further enacted, That no person who shall be so pronounced or declared excommunicate, shall incur any civil penalty or incapacity whatever, in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate shall direct, and in such case the said excommunication, and the term of such imprisonment, shall be signified or certified to his Majesty in Chancery, in the same manner as excommunications have been heretofore signified, and thereupon the writ *de excommunicato capiendo* shall issue, and the usual proceedings shall be had, and the party being taken into custody shall remain therein for the term so directed, or until he shall be absolved by such ecclesiastical court.

7 and 8 W. III. c. 6. s. 1.

'IV. And whereas in the seventh and eighth years of King *William* 'the Third an Act was made and passed, intituled "An Act for the 'more easy Recovery of Small Tithes," whereby, amongst other things 'therein enacted, Two or more of his Majesty's justices of the peace 'are authorized and required to hear and determine complaints touch-'ing tithes, oblations and compositions subtracted or withheld, not 'exceeding forty shillings: And whereas it has become expedient to 'enlarge such amount, and also to extend the said Act to all tithes 'whatsoever, of certain limited amount;' Be it enacted, That such

Justices of peace may determine complaints respecting tithes not exceeding ten pounds.

justices of the peace shall, from and after the passing of this Act, be authorised and required to hear and determine all complaints touching tithes, oblations and compositions subtracted or withheld, where the same shall not exceed ten pounds in amount from any one person in all such cases and by all such means, and subject to all such provisions and remedies, by appeal or otherwise, as contained in the said Act of King *William*, touching small tithes, oblations and compositions not exceeding forty shillings: Provided always nevertheless, that, from and after the passing of this Act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said Act is set forth.

Limitation of actions respecting tithes.

V. And be it further enacted, That, from and after the passing of this Act, no action shall be brought for the recovery of any penalty for the not setting out tithes, nor any suit instituted in any court of equity, or in any ecclesiastical court, to recover the value of any tithes, unless such action shall be brought or such suit commenced within six years from the time when such tithes became due.

7 and 8 W. 3. c. 34. s. 4. and 1 Geo. 1. st. 2. c. 6. s. 2.

'VI. And whereas in the seventh and eighth years of King *William* 'the Third an Act was made and passed, intituled "An Act that the 'solemn affirmation and declaration of the people called Quakers shall 'be accepted instead of an oath in the usual form," whereby among other 'things, it is therein enacted, where any Quaker shall refuse to pay for 'or compound for his great or small tithes, or to pay any church-rates, 'two or more of his Majesty's justices of the peace are authorised to 'hear and determine the same, not exceeding the value of ten pounds: 'And whereas by a statute made and passed in the first year of King '*George* the First the said Act is extended to other objects: And whereas

As to Quakers neglecting to pay tithes, &c. extended.

'it is become expedient to enlarge the said sum;' Be it enacted, That from and after the passing of this Act, all the provisions of the said Acts of King *William* and King *George* shall be deemed and taken to extend to any value not exceeding fifty pounds: Provided always nevertheless, That from and after the passing of this Act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said Act is set forth.

Recovery of church or chapel rates.

'VII. And whereas it is expedient that church-rates or chapel-rates 'of limited amount, unduly refused or withheld, should in certain

'cases be more easily and speedily recovered;' Be it enacted, That from and after the passing of this Act, if any one duly rated to a church-rate or chapel-rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty or town corporate where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace any person so refusing or neglecting to pay such rate, and to examine upon oath (which oath the said justices are hereby empowered to administer) into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed ten pounds, over and above the reasonable costs and charges, to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order, it shall and may be lawful for any one of such justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being thereout first deducted and allowed by the said justices; and any person finding him or herself aggrieved by any judgment given by two or more such justices, may appeal to the next general quarter sessions to be held for the county, riding, city, liberty or town corporate wherein the church or chapel is situated, in respect whereof such rate shall have been made, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: Provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined: Provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church-rate or chapel-rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of ten pounds from the party proceeded against: Provided likewise, that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and accustomed: Provided likewise, that nothing therein contained shall affect any regulations that may have been made by authority of Parliament, respecting the church-rates or chapel-rates of any particular parishes or districts.

Appeal.

Proviso for ecclesiastical jurisdiction.

Proviso.

VIII. And be it further enacted, That, from and after the passing of this Act, if any proctor of the Arches court of *Canterbury*, or any other ecclesiastical court or courts in which he shall be entitled to act as proctor, shall act as such, or permit or suffer his name to be in any manner used in any suit, the prosecution or defence whereof shall appertain to the office of a proctor, or in obtaining probates of wills, letters of administration or marriage licences, to or for, or on account or for the profit and benefit of any person or persons not entitled to act as a proctor, or shall permit or suffer any such person or persons to demand or participate in such profit and benefit, and complaint thereof shall be

Proctors allowing their names to be used by persons not entitled to act as proctors struck off rolls.

No. XXI. 53 Geo. III. c. 127.

made to the court or courts wherein such proctor hath been admitted and enrolled, and proof given to the satisfaction of the said court or courts that such proctor hath offended therein as aforesaid, then and in such case every such proctor so offending shall be struck off the roll of proctors, and be for ever after disabled from practising as a proctor, or be suspended from the office, function and practice of a proctor in all and every the said court or courts for so long a period as the judge or judges of the said court or courts may deem fit; save and except as to any allowance or allowances, sum or sums of money that are or shall be agreed to be made to the widows or children of any deceased proctor or proctors by any surviving partner or partners of such deceased proctor or proctors; and also save and except as to any agreement made, or understood to have been made, between proctors and articled clerks, whose articles have been executed prior to the passing of this Act.

Exception.

Persons exercising functions of a proctor not being duly enrolled.

IX. And be it further enacted, That, from and after the passing of this Act, in case any person or persons shall in his or in their own name, or in the name of any other person or persons, make, do, act, exercise or perform any act, matter or thing whatsoever in any way appertaining or belonging to the office, function or practice of a proctor, for or in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions or practice of a proctor, without being admitted and enrolled, every such person for every such offence, shall forfeit and pay the sum of fifty pounds, to be sued for and recovered in manner hereinafter mentioned.

Penalty.

Proviso for salaries of clerks of seven years standing.

X. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to any salary which shall be agreed to be paid by a proctor, his partner or successor, to a clerk really and *bona fide* serving in his office at the time of the passing of this Act, and who shall have been *bona fide* serving in the office of any proctor or proctors for seven years next before the passing of the same.

Recovery of penalties, &c.

XI. And be it further enacted, That all pecuniary forfeitures and penalties imposed on any person or persons for offences committed against this Act, shall and may be sued for and recovered in any of his Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, wherein no essoin, protection, privilege, wager of law or more than one imparlance shall be allowed, and wherein the plaintiff, if he or she shall recover any penalty or penalties, shall receive the same for his or her own use, with full costs of suit.

Limitation of actions.

XII. And be it further enacted, That if any action or suit shall be brought or commenced for any thing done in pursuance of this Act, every such action or suit shall be commenced within three calendar months next after the fact committed, and not afterwards, (1) and shall be laid and tried in the city or county wherein the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this Act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time limited for bringing the same, or shall be laid in any other city, county or place than as aforesaid, then the judge shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or suffer a discontinuance of their action or suit, after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in any other case by law.

General issue.

Treble costs.

(1) Where a constable, having a magistrate's warrant of distress to levy a church-rate, under the stat. 53 Geo. 3. c. 127. broke the door of and entered Plaintiff's dwelling-house: Held, that although he thereby exceeded his authority, yet that no action could be maintained after the expiration of three calendar months, Theobald *v.* Crichmore; 1 B. and A. 227.

No. XXI. 53 Geo. III. c. 127.

SCHEDULES to which this Act refers.

Schedule (A).

Significavit of party being contumacious and in contempt.

TO His Most Excellent Majesty and our Sovereign Lord George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, by Divine Providence, &c. Health in Him by whom Kings and Princes rule and govern: We hereby notify and signify unto your Majesty, That one of in the County of hath been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical, in not [*as the case may be*] appearing before [*here set out the style of the ecclesiastical judge, or his representative,*] or in not obeying the lawful commands [*here set out the commands*] of [such judge or representative] or in having committed a contempt in the face of the court of [such judge or representative] lawfully authorized by [*here set out the nature and manner of such contempt,*] on a day and hour now long past, in a certain cause of [*here set out the nature of the cause, and the names of the parties to the same.*] We therefore humbly implore and entreat your said most excellent Majesty would vouchsafe to command the body of the said to be taken and imprisoned for such contumacy and contempt. Given under the seal of our court the day of

A. B. Registrar, [*or*, Deputy Registrar, *as the case may be.*]

Schedule (B).

Writ de contumace capiendo.

GEORGE, &c. To the Sheriff of Greeting: The hath signified to us, that of in your county of is manifestly contumacious, and contemns the jurisdiction and authority of [*here fully state the non-appearance, disobedience, together with the commands disobeyed, or the contempt in the face of the court, as the case may be,*] nor will he submit to the ecclesiastical jurisdiction; but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, We command you that you attach the said by his body, until he shall have made satisfaction for the said contempt; and how you shall execute this our precept notify unto and in nowise omit this, and have you there this writ. Witness ourself at Westminster, the day of in the year of our reign.

Schedule (C).

Writ of deliverance.

WHEREAS of in your county of whom lately, at the denouncing of for contumacy, and by writ issued thereupon, you attached by his body until he should have made satisfaction for the contempt; now he having submitted himself, and satisfied the said contempt, We hereby empower and command you, that without delay you cause the said to be delivered out of the prison in which he is so detained, if upon that occasion and no other he shall be detained therein. Given under the seal of our of

A. B. Registrar, [*or*, Deputy Registrar, *or as the case may be.*]

Extracted by *E. F.*
Proctor.

No. XXII. 4 Geo. IV. c. 97.

[No. XXII.] 4 George IV. c. 47.—An Act for the Regulation of the Court of the Commissaries of *Edinburgh*; and for altering and regulating the Jurisdiction of Inferior Commissaries in *Scotland*.—[19th *July* 1823.]

48 Geo. 3. c. 151.

WHEREAS an Act was passed in the forty-eighth year of the reign of His late Majesty King *George* the Third, intituled *An Act concerning the Administration of Justice in* Scotland, *and concerning Appeals to the House of Lords*; by which Act His said late Majesty was empowered to name and appoint, and pursuant to which His said late Majesty did name and appoint, by His Majesty's royal sign manual, certain persons to make inquiries into the form of process before the Court of Session and the inferior courts, and to report upon various matters therein particularly set forth: And whereas an Act was passed in the forty-ninth year of the reign of His said late Majesty, intituled *An Act to give to the Persons named by His Majesty, pursuant to an Act passed in the last Session, of Parliament, intituled 'An Act concerning the Administration of Justice in* Scotland, *and concerning Appeals to the House of Lords,' further time for making their Report or Reports*: And whereas the Commissioners so appointed did make reports to His said late Majesty, and the two Houses of Parliament, relative to the subject matter upon which they were directed to report: And whereas by a warrant under the sign manual of His Royal Highness the Prince Regent, acting in the name and on behalf of His said late Majesty, dated the eighth day of *February* one thousand eight hundred and fifteen, other Commissioners were appointed for inquiring into the duties salaries and emoluments of the several officers clerks and ministers of justice of the courts of *Scotland*, and for reporting what regulations might be fit to establish respecting the same; which Commissioners have accordingly made several reports, which have been laid before Parliament, and in which it is recommended that provision should be established with respect to the granting confirmations, which may prevent the just rights of next of kin and of creditors, from being defeated; that quots or compositions should be abolished; and that certain regulations with respect to fees and otherwise, should be made, in regard to the Court of the Commissaries of *Edinburgh*, and with respect to the jurisdiction of inferior Commissary Courts: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of *January*, one thousand eight hundred and twenty-four, all compositions in respect of confirmation, and all fees termed consignation fee and sentence money, shall be, and the same are hereby from thenceforth abolished.

49 Geo. 3. c. 119.

Compositions in respect of Confirmation, and Fees termed Consignation Fee, and Sentence Money, abolished.

Extracts of Decrees, as now practised, to cease.

II. And be it further enacted, That from and after the first day of *January* one thousand eight hundred and twenty-four, extracts of decrees in the said Court of the Commissaries of *Edinburgh*, and testaments testamentor in the manner now practised, shall cease and determine; and thereafter abridged forms of extracts, in the manner herein-after provided, shall be adopted; save and except where a full extract shall be required in the manner now practised by any party desiring the same.

Commissaries of Edinburgh to prepare Table of Fees, and to frame Forms for abridging of Extracts.

III. And be it further enacted, That as soon as conveniently may be after the passing of this Act, the Judges of the said Court of the Commissaries of *Edinburgh* shall and they are hereby directed and required to frame a proper and suitable table of fees, to be taken by the clerks and officers of the said court, and the practitioners before the same, for and in respect of proceeding in such court, in order to fix and ascertain the emoluments and charges which shall be justly exigible by such clerks officers and practitioners; and also proper and suitable forms for abridging the forms of extracts now in use in the said court, as nearly as may be according to the forms for extracts prescribed by an Act passed in the fiftieth year of the reign of His late Majesty King *George* the Third, in-

tituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *and for the Regulation of certain Parts of the Proceedings of that Court*; and also to fix and ascertain the fees to be paid for such extracts to be included in the said table of fees, having regard to the reports of the said Commissioners in that behalf.

Such Form and Table of Fees to be sanctioned by the Court of Session.

IV. Provided always, and be it enacted, That every such form and table of fees, to be framed by the judges of the said court, pursuant to this Act, shall be presented by such judges to the Lords of Council and Session, by whom the same shall be considered; and after due deliberation and conference, if necessary, with the said judges, every such form and table of fees shall, with or without alteration, be adjusted and published by an Act of Sederunt of the Court of Session; and it shall be lawful for the said Lords to alter any such form and table of fees, by a new Act or Acts of Sederunt, from time to time thereafter, as they shall see cause: Provided always, that every such Act of Sederunt shall be reported to Parliament in manner herein-after directed.

Office of Principal Clerk to be abolished.

V. And be it further enacted, that from and after the first day of *January* one thousand eight hundred and twenty-four, the office of principal clerk of the said Court of the Commissaries of *Edinburgh* shall be, and the same is hereby from thenceforth abolished, and thenafter there shall only be two clerks of the said court, entitled to receive fees; the one to be appointed by his Majesty, and who shall perform the duties of his office in person; the other to be named by the clerk so appointed, as his deputy during his pleasure, and for whom he shall be responsible.

Commissaries' Clerks to discharge Duties in Person.

Sheriffdoms and Stewartries to become Commissariats.

VI. And be it further enacted, That from and after the said first day of *January* one thousand eight hundred and twenty-four, the boundaries of all inferior commissariats, as they exist at present, shall cease and determine; and from thenceforth every sheriffdom and stewartry, shall constitute a commissariat, excepting always the sheriffdoms of *Edinburgh*, *Haddington* and *Linlithgow*, which sheriffdoms shall be and remain the commissariat of *Edinburgh*, as provided by this Act; and provided always, that where two counties shall be under the jurisdiction of one sheriff, such two counties shall constitute one commissariat.

Small Debt Jurisdiction of Commissaries abolished.

VII. And be it further enacted, That from and after the said first day of *January* one thousand eight hundred and twenty-four, the jurisdiction now exercised by the commissaries of *Edinburgh*, in actions for the recovery of debts not exceeding forty pounds *Scots*, and all prorogation of their jurisdiction in any action for the recovery of debt, shall be and the same is hereby declared to be from thenceforth abolished and prohibited; and no inferior commissary, as established by this Act, shall possess or exercise any jurisdiction in such actions, or in any cases to which the jurisdiction of the sheriff is now competent.

Inferior Commissaries as at present to cease, and Sheriffs to become Commissaries.

VIII. And be it further enacted, That from and after the said first day of *January* one thousand eight hundred and twenty-four, the persons then severally filling the offices of inferior commissaries shall cease to hold such offices; and the persons then filling the offices of sheriffs or stewarts depute shall respectively become commissaries, each over the commissariat comprehending the county or stewartry or counties of which such persons shall respectively be sheriffs or stewarts depute; and every such person shall continue to hold the said office of commissary so long as he shall fill the said office of sheriff or stewart depute of such county or stewartry, or counties, and no longer; and every person thereafter appointed to the office of sheriff or stewart depute shall, in consequence of such appointment, become the commissary of the commissariat hereby established, over the county or stewartry or counties of which he is appointed the sheriff or stewart depute, and be vested with all the jurisdiction powers and privileges belonging to the said office of commissary therein, and shall continue to hold and exercise the same so long as he shall fill the said office of sheriff or stewart depute, and no longer.

Proceedings of Sheriffs or Stewarts, as Commissaries, reviewable only by the Court of Session.

IX. And be it further enacted, That it shall not be lawful or competent for the Judges of the said Court of the Commissaries of *Edinburgh*

to review the proceedings of inferior commissaries as established by this Act, but all such proceedings shall be reviewable only by the Court of Session.

Sheriff Substitutes to be appointed Commissaries Depute.

X. And be it further enacted, That it shall and may be lawful for every sheriff or stewart depute hereby appointed a commissary, and his successor in office within his sheriffdom or stewartry, to name and appoint as his deputy or deputies the person or persons acting as sheriff substitute or substitutes within such county, so long as any such person or persons shall continue so to act; and every such commissary and commissary depute shall exercise within their several commissariats, as hereby constituted, the powers and authorities exercised by the present commissaries; save and except as is provided by this Act.

Provision as to depending Actions.

XI. And be it further enacted, That all actions and proceedings which shall be depending on the said first day of *January* one thousand eight hundred and twenty-four, before any inferior commissary, shall by virtue of this Act be transferred to the commissary of the county or stewartry wherein such actions and proceedings would have originated if this Act had been passed previous to the commencement thereof; and such actions and proceedings shall thereupon be pursued and brought to a conclusion before such commissary, in the same manner as if they had been brought or commenced before such commissary in the first instance; and as soon as conveniently may be after the said first day of *January* one thousand eight hundred and twenty-four, the processes in all such depending actions and all such depending proceedings shall be accordingly transmitted, together with an inventory thereof made by the commissary clerk, to the accuracy of which he shall make oath, if required.

Records and Warrants of Decrees of inferior Commissaries to be transmitted to the General Register House.

XII. And be it further enacted, That as soon as conveniently may be after the said first day of *January* one thousand eight hundred and twenty-four, all other processes records and warrants of decrees of inferior commissaries, together with an inventory thereof made by the commissary clerk, which he is hereby required to do, and to make oath to the accuracy thereof, if required, shall be transmitted to the General Register House at *Edinburgh*.

Where Courts are at present held, the Clerk shall become the Commissary Clerk for the Commissariat hereby established, who may name his Deputy, &c.

XIII. And be it further enacted, That in counties or stewartries wherein a Commissary Court is at present held, the clerk of such court shall, after the said first day of *January* one thousand eight hundred and twenty-four, become the commissary clerk for the commissariat hereby established in such county or stewartry, with power to such commissary clerk to name a deputy to act for him so long as he shall hold the said office, and for whom he shall be responsible; and in any county or stewartry where more than one of such courts is at present held, the commissary clerk whose emoluments shall amount to the highest annual sum, as set forth in the report of the said Commissioners in that behalf, herein-before recited, shall become the commissary clerk for the commissariat hereby established in such county or stewartry, with power to name a deputy as aforesaid.

Provision as to other Commissary Clerks.

XIV. And be it further enacted, That in all other counties, as also in the event of the death resignation or removal of any such commissary clerk, who shall become the commissary clerk of a commissariat, as immediately before directed, it shall and may be lawful for His Majesty, his heirs and successors, to appoint a proper person to be commissary clerk; and every person henceforth to be appointed a commissary clerk shall perform his duty in person.

No Gratuity for any Appointment.

XV. And be it further enacted, That all appointments and nominations to any office in any of the said Commissary Courts shall be made without receiving any price gratuity or valuable consideration of any kind.

Judges of the Court of Session to appoint Commissioners to frame Regulations and a Table of Fees for Commissary Courts.

XVI. And be it further enacted, That as soon as conveniently may be after the passing of this Act, the Court of Session, at a meeting specially called by the Lord President for this purpose, shall and they are hereby directed and required to appoint, by a commission duly executed

by them, five sheriffs or stewards depute, for the purpose of establishing tables of fees in the several inferior Commissary Courts as hereby established, in the manner directed in the case of the Court of the Commissaries of *Edinburgh*, regard being always had to the reports of the said Commissioners herein-before recited in that behalf.

Provision as to abridged Extracts.

XVII. And be it further enacted, That the said five sheriffs or stewards so appointed shall and they are hereby authorized and required to frame proper and suitable forms for abridging the extracts of the decrees of the said inferior Commissary Courts, as established by this Act, as nearly as may be according to the forms for extracts prescribed by the said Act passed in the fiftieth year of the reign of His late Majesty King *George* the Third, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *and for the Regulation of certain Parts of the Proceedings of that Court.*

50 Geo. 3. c. 112.

Form to be established by Act of Sederunt.

XVIII. And be it further enacted, That a report or reports shall be made to the Court of Session by the said five sheriffs or stewarts so appointed, as to the several matters and things upon which they are directed to report as aforesaid; and after such reports shall have been so made, it shall and may be lawful for the said court, if they think fit, to require explanations or information relative to any part of such report or reports, and to have conferences thereupon with all or any of the said sheriffs and stewarts so appointed; and after being well and ripely advised in that behalf, it shall and may be lawful for the Court of Session to give effect to the same by any Act or Acts of Sederunt, to be observed in each of the said Commissary Courts established by this Act, and the several persons holding offices and discharging duties therein, or practising before the same.

A Copy of every Act of Sederunt made under this Act to be laid before Parliament.

XIX. Provided always, and be it enacted, That a copy of every such Act of Sederunt, and table of fees to which it may or shall refer, shall be transmitted by the Lord President of the Court of Session to His Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament, at or immediately after the commencement of the Session of Parliament next ensuing the passing of this Act; and every fee sanctioned by such Act of Sederunt shall and may be demanded and taken from and after the said first day of *January* one thousand eight hundred and twenty-four, and shall thereafter, according to the terms of such Act of Sederunt, be and be deemed and taken to be a legal fee, and payable and receivable as such in the manner therein directed, unless altered by Parliament.

Further Power to establish Fees.

XX. And be it further enacted, That from time to time and in all time hereafter, as often as it shall appear to be necessary, it shall and may be lawful for the Court of Session, at a meeting to be called by the Lord President for that purpose, to appoint, by a commission duly executed by them, five sheriffs depute for the purpose of considering any such table of fees theretofore established, in or for the inferior Commissary Courts hereby established, by which five sheriffs so to be from time to time appointed a report or reports shall be made to the Court of Session as herein-before directed; and after any such report shall have been made, it shall and may be lawful for the said court, if they think fit, to require explanations or information relative thereto as aforesaid, and to have conferences thereupon with all or any of the said sheriffs; and by Act or Acts of Sederunt to make and establish a further or other table or tables of fees in and for the said inferior Commissary Courts, and the officers and practitioners therein: Provided always, that no claim of compensation shall arise or be allowed to any clerk or officer appointed after the passing of this Act, by reason of any such further table of fees; and provided also, that a copy of every such Act of Sederunt, together with any table of fees to which it may refer, shall be transmitted by the Lord President of the Court of Session to His Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament as herein-before directed; and after the expiration of the period herein-before limited, as the case may be, every such Act of Sederunt and table of fees shall become in force; and thereafter, but not

No. XXIV. 10 Geo. IV. c. 53.

sooner, every such fee shall, according to the terms of such Act of Sederunt, be and be deemed and taken to be a legal fee, and payable and receivable as such in the manner therein directed.

Compensation to be made to Commissaries, &c.

XXI. And be it further enacted, That it shall and may be lawful for any commissary commissary clerk or other officer holding his office at the passing of this Act, and entitled to compensation for loss to be suffered through the operation and effect of this Act, to make application to the Barons of Exchequer in *Scotland*, who shall direct intimation thereof to be given to His Majesty's advocate, and thereafter the said barons shall inquire into and consider the circumstances of the case, and after due investigation of the legality of the claim, and of the fees or emoluments in respect whereof such loss shall be stated to have arisen, and having regard to the fees to which any such person may become entitled pursuant to this Act, the said barons shall award to every such person such compensation as they shall think such person entitled to, either by the payment of a gross sum or by way of annuity, as they shall think proper: Provided always, that every order made for such compensation shall be laid before Parliament within two calendar months after the commencement of the Session next ensuing after making the same: Provided further, that no decision of the said barons shall be final and conclusive, until two calendar months after a copy of the order of such barons for compensation shall have been laid before Parliament.

Fund out of which Compensation shall be paid.

XXII. And be it further enacted, That any sum of compensation so to be awarded shall be paid and payable upon the order of the said barons, in such manner and at such time or times as they shall direct, out of any monies charged or made chargeable by Acts made in the seventh and tenth years of the reign of Her Majesty *Queen Anne*, with the fees salaries and other charges allowed or to be allowed for keeping up the Courts of Session Justiciary or Exchequer; and every sum of compensation to be paid shall be free and clear of all taxes and deductions whatsoever.

Salaries of Sheriffs to be paid without Deduction.

XXIII. And be it further enacted, That the respective salaries of Sheriffs and Stewarts Depute and Substitute shall, after the passing of this Act, be paid to them free of all taxes and deductions whatsoever; any law or practice to the contrary notwithstanding.

[No. XXIII.] 5 George IV. c. 27.—An Act to explain and amend an Act of the Parliament of *Ireland*, passed in the Thirty-eighth Year of the Reign of His Majesty King *George* the Third, for the better ascertaining the Amount, and securing the Payment of the Bills of Costs of Proctors, employed in carrying on and defending Suits, and transacting Business in the High Court of Admiralty, in His Majesty's Court of Prerogative, in the Court of Delegates, and in all Ecclesiastical Courts within the Kingdom of *Ireland*.—[17th *May* 1824.]

[No. XXIV.] 10 George IV. c. 53.—An Act to regulate the Salaries Duties and Emoluments of the Officers Clerks and Ministers of certain Ecclesiastical Courts in *England*.—[19th *June* 1829.]

PART IV.

CLASS XXV.

PART IV.

CLASS XXV.

Courts of Equity. (1)

[No. I.] 18 Edward III. st. 5.—The Oaths of the Clerks of the Chancery, and of the Clerks of Course.

18 Edward III. stat. 5.

'YE shall swear, that well and lawfully ye shall serve our Lord the King and his people in the office of clerk of the Chancery, to which ye be attitled; and ye shall not assent nor procure the King's disherison nor perpetual damage to your power; nor ye shall do, nor procure to be done, any fraud to any man's wrong, nor thing that toucheth the keeping of the seal: And ye shall lawfully give counsel in the thing that toucheth the King, when ye shall be thereto required; and the counsel which you know touching him, ye shall conceal. And if you know the King's disherison, or perpetual damage or fraud to be done upon the things which touch the keeping of the seal, ye shall put your lawful power to repress and amend it; and if ye cannot do it, then ye shall certify the Chancellor or other, which may do the same,

Clerks of course.

to be amended to your intent. And for the clerks of course shall be added: And ye shall not bring, nor to your knowledge suffer to be brought, any writs which ye make out of the court not sealed, thereof to do execution, nor shall record any attorney by writs, nor without writs, without especial licence, if ye have not lawfully examined the party and the attorney in proper person, or at the least him that shall make attorney in proper person. Nor ye shall deliver any writ which shall be of commandment to the examiners, nor to the seal, before that the same writ be sent to you by the commander, which thereof hath power, unless it be to the Chancellor, or to one of the masters, which commandeth you to make the writs. And all the writs which ye shall make, ye shall deliver to the examiners by your own hand, or by one companion which is sworn to the King, if ye yourself be out of the court because of sickness, or other cause necessary, so that ye cannot do it. And no writ written of another man's hand shall be delivered to the examiners under your name, as yours, nor no name shall be put under your writs, but your own, as God you help, and all saints.'

[No. II.] 17 Richard II. c. 6.—Upon an untrue Suggestion in the Chancery, Damages may be awarded.

17 Richard II. c. 6.

"ITEM, Forasmuch as people be compelled to come before the King's counsel, or in the Chancery by writs grounded upon untrue suggestions;" 'that the Chancellor for the time being, presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion, to him which is so troubled unduly, as afore is said.'

[No. III.] 15 Henry VI. c. 4.—None shall sue a *Subpœna* until he find Surety to satisfy the Defendant his Damages, if he do not verify his Bill.

(1) For Acts respecting Conveyances by Infants, Lunatics, &c., see Part II. Class VI.

No. III. 15 Hen. VI. c. 4.

"ITEM, For that divers persons have before this time been greatly "vexed and grieved by writs of *subpœna* purchased for matters de- "terminable by the common law of this land, to the great damage of "such persons so vexed, in subversion and impediment of the common "law aforesaid;" 'our Lord the King doth command, That the statutes 'thereof made shall be duly observed according to the form and effect 'of the same, and that no writ of *subpœna* be granted from henceforth 'until surety be found to satisfy the party so grieved and vexed for his 'damages and expenses, if so be that the matter cannot be made good, 'which is contained in the bill.'

This chapter is not upon the roll.

[No. IV.] 5 Elizabeth, c. 18.—An Act declaring the Authority of the Lord Keeper of the Great Seal and the Lord Chancellor of *England* to be one.

5 Elizabeth c. 18.

'WHERE some question hath of late risen, whether like place, au- 'thority, pre-eminence, jurisdiction and power doth belong, and 'of right ought to belong to the office of the Lord Keeper of the 'Great Seal of *England* for the time being, as of right doth and ought 'to belong to the office of the Lord Chancellor of *England* for the time 'being, or not:'

The authority of the Lord Keeper of the great seal, and the Lord Chancellor is all one.

II. For declaration whereof and in avoiding such question hereafter, be it enacted and declared by the Queen our sovereign Lady, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That the common law of this realm is, and always was, and ought to be taken, that the Keeper of the great seal of *England* for the time being hath always had, used and executed, and of right ought to have, use and execute, and from hence- forth may have, perceive, take, use and execute, as of right belonging to the office of the Keeper of the great seal of *England* for the time being, the same and like place, authority, pre-eminence, jurisdiction, execution of laws, and all other customs, commodities and advantages, as the Lord Chancellor of *England* for the time being lawfully used, had and ought to have, use and execute, as of right belonging to the office of the Lord Chancellor of *England* for the time being, to all intents, constructions and purposes, and as if the same keeper of the great seal for the time being were Lord Chancellor of *England*.

[No. V.] 43 Elizabeth, c. 4.—An Act to redress the Mis-employment of Lands, Goods and Stocks of Money heretofore given to certain charitable Uses.

[Inserted Part II. Class V. No. 9.]

[No. VI.] 1 William and Mary, st. 1. c. 21.—An Act for enabling Lords Commissioners for the Great Seal to execute the Office of Lord Chancellor or Lord Keeper.

1 Wm. & Mary, st. 1. c. 21.

'WHEREAS their most excellent Majesties King *William* and Queen 'Mary, have thought fit that the office of the Lord Chancellor or 'Lord Keeper of the great seal of *England*, should be executed by com- 'missioners appointed for the same under the great seal of *England*: 'And whereas several authorities, jurisdictions, and powers, are by seve- 'ral Acts of Parliament, and otherwise, vested, settled, and placed in the 'Lord Chancellor of *England*, or Lord Keeper of the great seal of *Eng- 'land* for the time being:' Now for the preventing of all doubts and questions that may arise, whether all or any of those authorities, juris- dictions, and powers may be exercised by such commissioners;

No. VI. 1 W. & M. st. 1. c. 21.

Commissioners of the great seal may execute the power of chancellor.

II. Be it enacted and declared, and it is hereby enacted and declared by the King's and Queen's most excellent Majesties, and by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That such commissioners for the time being may use and exercise at all times according to their commissions, as of right belonging to the Lords Commissioners of the great seal of *England* for the time being, all and every the same and like offices, authority, jurisdiction, and execution of laws, and all other customs, privileges, emoluments, and advantages, which the Lord Chancellor of *England*, or Lord Keeper of the great seal of *England* for the time being, of right ought to have, use, or execute, as belonging to their or either of their said offices, or otherwise howsoever, to all intents and purposes, as if the said Lords Commissioners for the time being were Lord Chancellor, or Lord Keeper of the great seal of *England*, and shall have, and take place next after the peers of this realm, and speaker of the House of Commons, unless any of them shall happen to be a peer, and then to take place according to his peerage.

Their place.

One commissioner may hear motions, &c.

III. Provided always, and be it enacted by the authority aforesaid, That any one commissioner (in the absence of the others) may hear motions, and give orders and directions touching the interlocutory proceedings in any cause, so as such one commissioner in the absence of the others shall not make any decrees, or put the great seal to any thing whatsoever, whereunto the whole broad seal ought to be affixt, unless there be two commissioners present.

Custos rotulorum how to be chosen.

37 H. 8. c. 1.

IV. And be it further enacted by the authority aforesaid, That the nominating and appointing of the *custos rotulorum*, throughout all the shires and counties of this realm, is and shall be as is directed by a statute made in the thirty-seventh year of *Henry* the Eighth, intituled, "A bill for *custos rotulorum*, and the clerkship of the peace;" any law, usage, or statute to the contrary in any wise notwithstanding.

Clerk of the peace how to be appointed.

V. And be it further enacted by the authority aforesaid, That the *custos rotulorum*, or other person, to whom of right it doth or shall belong to nominate or appoint the clerk of the peace for any county, riding, division, or other place, shall from time to time, where the office of the clerk of the peace now is, or hereafter shall be void, nominate and appoint one able and sufficient person residing in the said county, riding, division, or other place, for which he is so appointed or to be appointed clerk of the peace, to execute the same by himself or his sufficient deputy, and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well demean himself in his said office.

Justices of peace may discharge clerk of the peace.

VI. And be it enacted by the authority aforesaid, That if any clerk of the peace already nominated or to be nominated, as aforesaid, shall misdemean himself in the execution of the said office, and thereupon a complaint and charge in writing of such misdemeanor shall be exhibited against him to the justices of the peace in their general quarter-sessions, it shall be lawful for the said justices, or the major part of them, from time to time, upon examination and due proof thereof, openly in their said general quarter-sessions, to suspend or discharge him from the said office; and that in such case the *custos rotulorum*, or other person, to whom it shall of right belong to nominate and appoint the clerk of the peace for such county, riding, division, or place, shall nominate and appoint one other able and sufficient person residing in the said county, riding, division, or place, as aforesaid, to be clerk of the peace in the place of such person so amoved, as aforesaid; and in case of refusal or neglect to make such nomination and appointment, before the next general quarter-sessions to be holden after the said refusal, that it shall and may be lawful for the said justices of the peace, at their general quarter-sessions for the said county, riding, division, or place, or the major part of them, to nominate and appoint one able and sufficient person residing in the said county, riding, division, or place, to be clerk of the peace in the place of such person so amoved, as aforesaid, to have, hold, and enjoy, the said office of clerk of the peace, and to execute the

Who shall nominate upon such vacancy.

No. VI. 1 W. & M. st. 1. c. 21.

same by himself, or his sufficient deputy, and to receive the fees, profits, and perquisites thereof.

VII. Provided always, and be it enacted by the authority aforesaid, That he shall be liable and subject to all the penalties, forfeitures, conditions, limitations, and provisions herein and hereby mentioned and expressed, and may be amoved or discharged by the said justices, or the major part of them, in such manner and way as is above specified. New clerk of the peace liable to penalties, &c.

VIII. And be it further enacted by the authority aforesaid, That it shall not be lawful for any *custos rotuloram*, or other person, to whom of right it doth or shall belong to nominate, elect, or appoint, any clerk of the peace, to sell the said place of clerk of the peace, or to take any bond or other assurance to receive or have any reward, money, fee, or profit, directly or indirectly, to him or any other person, for such nominating, electing, or appointing, but that every such *custos rotulorum*, or other person that shall so sell the clerkship of the peace, and every clerk of the peace, who shall so buy his place, are hereby disabled to hold their places of *custos rotulorum*, or clerkship of the peace, and shall also each of them respectively forfeit double the sum or value of other thing that shall be so given or taken, to be recovered by him or them to their own use that shall sue for the same, to be prosecuted by any action of debt, suit, bill, plaint, or information, in any of their Majestics' Courts at *Westminster*, wherein no essoin, protection, or wager of law shall lie. Custos rotulorum, &c. shall take no fee. Penalty upon buyer and seller.

IX. And be it further enacted by the authority aforesaid, That every clerk of the peace, before he enter upon the execution of his said office, shall in open sessions take the oath following, *viz.* Clerk of the peace to take the following oath.

'I A. B. do swear, That I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond or other assurance to pay any money, fee, or profit directly or indirectly to any person or persons whomsoever, for such nomination or appointment.

'*So help me God.*'

X. Provided always, That nothing in this Act contained shall any ways affect or relate to the clerk of the peace for the duchy and county palatine of *Lancaster* only; which said clerk of the peace holds his said office for lives, by grants from his late Majesty King *Charles* the Second, as his predecessors in the said place have done, from former Kings and Queens of this realm, in right of their duchy and county palatine aforesaid. This Act to commence from the first day of *May*, One thousand six hundred eighty-nine. Not to extend Lancaster.

[No. VII.] 4 and 5 William and Mary, c. 16.—An Act to prevent Frauds by clandestine Mortgages.

[Inserted Part II. Class I. No. 18.]

[No. VIII.] 4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

XXII. AND be it further enacted by the authority aforesaid, That no *subpœna*, or any other process for appearance, do issue out of any court of equity, till after the bill is filed with the proper officer in the respective courts of equity, except in cases of bills for injunctions to stay wastes, or stay suits at law commenced, and a certificate thereof brought to the *subpœna* office, or to him who usually makes out *subpœnas* or other process in the several courts of equity, under the hand of the six clerk, or other clerk or officer who usually files bills in equity, for which certificate he shall receive no fee. 4 Anne, c. 16. No subpœna to issue till after bill filed. Exception.

XXIII. And for the better preventing vexatious suits in courts of equity; be it further enacted, That upon the plaintiff's dismissing his On dismissing bills in equity,

No. VIII. 4 Anne, c. 16.

plaintiff or defendant to pay full costs.

own bill, or the defendant's dismissing the same for want of prosecution, the plaintiff in such suit shall pay to the defendant or defendants his or their full costs, to be taxed by a master: And that no copy, abstract, or tenor of any bill in equity, do go with the *dedimus* or commission for taking the defendant's answer; but in lieu and recompence thereof, the sworn clerks of the Court of *Chancery* shall take to their own use, in all causes, the whole term fee of three shillings and four-pence, and also the whole fee or fees of and for all small writs made by the said sworn clerks.

[Inserted at large, Part II. Class I. No. 23.]

B. [No. IX.] 5 Anne, c. 9.—An Act for rendering more effectual an Act passed in the first Year of her Majesty's Reign, intituled, "An Act for the better preventing Escapes out of the *Queen's Bench* and *Fleet Prisons*."

5 Anne, c. 9. Persons in custody of sheriff on a decree, and making his escape, sheriff liable to pay, &c.

IV. AND be it further enacted by the authority aforesaid, That if any person or persons is, are, or shall be in custody of any sheriff or other officer, either by virtue of the said Act, or of this present Act, or otherwise, for not performing any decree of the High Court of *Chancery*, or Court of *Exchequer*, whereby any sum or sums of money is ordered or decreed to be paid, and shall afterwards make any escape from the said sheriff or other officer, that then and in such case the person and persons, their executors or administrators, to whom the money was to be paid by the said decree, shall have the same remedy against the said sheriff, as if such person or persons so escaping had been in custody upon an execution at law, and shall and may recover the several sum and sums of money decreed to be paid to him, her, or them in and by such decree, against such sheriff or other officer, together with his, her, or their costs of suit, in any action or actions of debt, or upon the case, to be brought or commenced against such sheriff or other officer in any of her Majesty's Courts of Record at *Westminster*, wherein no protection or wager of law shall be admitted, or any more than one imparlance; any law, usage, or custom to the contrary in any wise notwithstanding.

[Inserted at large Part IV. Class III. No. 20.]

B. [No. X.] 12 George I. c. 32.—An Act for better securing the Monies and Effects of the Suitors of the Court of Chancery, and for other Purposes.

12 George I. c. 32. An accountant-general of the Court of Chancery appointed.

III. AND to the end the account between the suitors of the High Court of Chancery and the Bank of *England* may be the more regularly and plainly kept, and the state of such account may be at all times seen and known, Be it further enacted by the authority aforesaid, That there shall be one person appointed by the High Court of Chancery, to act, perform, and do all such matters and things relating to the delivery of the suitors' money and effects into the bank, and taking them out of the bank, and the keeping the accounts with the bank, and all other matters relating thereto, as in and by the said recited orders, or either of them, are prescribed and directed to be done and performed by the masters and usher of the said High Court of Chancery, which said officer so to be appointed shall be called the accountant-general of the Court of Chancery, and shall hold such office during the pleasure of the said court; and an account shall be kept in his name with the Bank of *England* for and on the behalf of the suitors of the said Court of Chancery, in such manner as is directed by the said recited orders, with respect to the masters of the said court and the bank; and the same rules, methods and directions, as are prescribed by the said orders to the suitors, the masters, usher and bank, as to the delivering

into, and taking out of the bank the monies and effects of the suitors, and other matters therein contained, shall be observed by the suitors, the bank, and the said accountant-general, unless where the Court of Chancery shall, according to the exigency and circumstances of affairs, otherwise determine and appoint.

Accountant to be in the place of the masters and usher of the court.

IV. And it is hereby further enacted by the authority aforesaid, That the said accountant-general shall, as to the several regulations and directions prescribed in the said orders, stand and be in the place and room of the masters, and usher of the said court, and shall receive no other fee or reward from the suitors for the exercise of his said office, than what is allowed to the masters in and by the said order of the twenty-sixth day of *May* one thousand seven hundred and twenty-five; and the several masters and usher of the Court of Chancery, their executors and administrators, are hereby required with convenient speed, to make up their several accounts with the said accountant-general, or any other person thereunto authorized by the Court of Chancery, of all the monies, securities and effects of the suitors of the said court in their custody, or under their direction or care; and to pay and deliver into the bank all monies, deposits and effects of the suitors of the said court yet remaining in their several hands, there to be carried to the account of the said accountant-general, and to be placed causewise or otherwise, as is already, or shall hereafter be directed by the said court; and all monies, deposits and effects of the suitors of the said court, already deposited with or delivered to the bank by the said masters or usher, or on their account, shall in like manner be carried to the account of the said accountant-general, and be placed causewise or otherwise, as is already or shall hereafter be directed by the said court; and the said masters and usher, their executors and administrators, shall be indemnified and discharged of and from all monies, deposits and effects of the said suitors, so paid or delivered into the bank as aforesaid.

Mortgages, &c. now in the name of masters, &c. assigned to the accountant.

V. And it is hereby further enacted, That all mortgages, tallies, orders, stocks, annuities and other transferable securities, now in the name of any of the said masters or usher, either singly by themselves, or jointly with others, in trust for the suitors of the said court, shall be assigned and transferred to the said accountant-general; and such assignments and transfers shall be freed and discharged from the stamp-duty, and from any other duty imposed thereon by Act of Parliament; and that all mortgages, tallies, orders, stocks, annuities, and other transferable securities, to be hereafter taken by the directions of the said court for the benefit of any of the suitors shall, if appointed to be taken in the name of any officer of the said court, be taken in the name of the said accountant-general; and that in all such assignments and transfers to the said accountant-general, as also in all such other transferable securities, to be hereafter taken in his name, the particular trust shall be specified and inserted in the assignment, transfer or security itself; and such other rules and methods of proceeding shall be had and observed with respect to such transferable securities, by the accountant-general and others, as by the said recited orders are respectively appointed to be observed by the masters, ushers, and others.

After death, &c. of accountant, the securities vested in his successor.

VII. And it is hereby further enacted, That from and after the death or removal of any accountant-general, all mortgages, tallies, orders, stocks, annuities, and other transferable securities, vested in him at the time of such his death or removal, in trust for the suitors of the said court, shall vest in the succeeding accountant general, for the same estates and interests as he then had therein, and subject to the same trusts, without any assignment or transfer whatsoever; and that upon such death or removal of any accountant-general, all monies, deposits and effects of the suitors of the said court, for which he shall then have credit in his account with the bank, shall be carried to the account of the succeeding accountant-general.

VIII. And to the end that all misapplications or wastings of the sub-

No. X. 12 Geo. I. c. 32.

jects' money by any officer of the High Court of Chancery may be entirely prevented for the future, Be it therefore further enacted by the authority aforesaid, That the said accountant-general shall not meddle with the actual receipt of any of the money or effects of the suitors, but shall only keep the account with the bank; and the said accountant-general observing the rules hereby prescribed, or hereafter to be prescribed to him by the said court, shall not be answerable for any money or effects which he shall not actually receive; and the Bank of *England* shall be answerable for all the monies and effects of the suitors which are or shall be actually received by them.

Accountant not to meddle with the suitor's money, but only keep account with the bank.

[For Section IX. see Vol. VI.]

[No. XI.] 12 George I. c. 33.—An Act for Relief of the Suitors of the High Court of Chancery.

12 George I. c. 33.

'XX. AND to the end that no suitor or suitors of the said Court of Chancery may be delayed in payment of any money due to 'him, her or them, but that every one may receive his or her full 'demand, whensoever he or she shall apply for the same, in the most 'easy and expeditious way;' Be it therefore enacted by the authority aforesaid, That all the money and cash now deposited in the bank, or that shall at any time hereafter be paid into or deposited in the bank, on the account of the suitors of the said Court of Chancery, or any of them, or by order of the said court, and all the monies arising by the rates and duties given by this Act, or borrowed thereon, and paid into the bank, shall be and be accounted and taken to be one common and general cash, and shall be promiscuously issued and issuable when and as the Court of Chancery shall direct, for the answering, paying and clearing the debts and demands of any of the suitors of the said court.

The cash in the bank to be one common cash.

[The rest of the Act relates to the relief of suitors with respect to money in the hands of defaulting masters.]

[No. XII.] 3 George II. c. 30.—An Act to put an End to certain Disputes touching Orders and Decrees made in the Court of Chancery.

3 George II. c. 30.

'WHEREAS divers questions and disputes have arisen touching the 'authority of the Master of the Rolls in the High Court of Chan-'cery,' For putting an end to all disputes concerning the same, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all orders and decrees made by the present Master of the Rolls or any of his predecessors, or hereafter to be made by the said Master of the Rolls, or any of his successors, except orders and decrees of such nature or kind as, according to the course of the said court, ought only to be made by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being, shall be deemed and taken to be valid orders and decrees of the said Court of Chancery, subject nevertheless to be discharged, reversed or altered by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being, and so as no such orders or decrees be inrolled till the same are signed by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal.

Orders and decrees made by the master of the rolls valid.

Exception.

[No. XIII.] 5 George II. c. 25.—An Act for making Process in Courts of Equity effectual against Persons who abscond, and cannot be served therewith, or who refuse to appear.

No. XIII.
5 George II.
c. 25.

'WHEREAS sometimes persons have withdrawn themselves beyond the seas, or otherwise absconded, to avoid appearing in Courts of Equity, or being served with process for that purpose, or being brought into court by *habeas corpus*, have refused to appear;' For remedy of the inconveniences thence arising, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if in any suit which hath been, or hereafter shall be, commenced in any Court of Equity, any defendant or defendants, against whom any *subpœna* or other process shall issue, shall not cause his, her or their appearance to be entered upon such process within such time, and in such manner as according to the rules of the court the same ought to have been entered in case such process had been duly served, and an affidavit or affidavits shall be made to the satisfaction of such court, that such defendant or defendants is or are beyond the seas, or that upon inquiry at his, her or their usual place of abode, he, she or they could not be found so as to be served with such process, and that there is just ground to believe that such defendant or defendants is or are gone out of the realm or otherwise abscond, to avoid being served with the process of such court; then and in such case the court out of which such process issued, may make an order directing and appointing such defendant or defendants to appear at a certain day therein to be named; and a copy of such order shall within fourteen days after such order made be inserted in the *London Gazette*, and published on some Lord's Day, immediately after divine service, in the parish church of the parish where such defendant or defendants respectively made his, her or their usual abode, within thirty days next before such his, her or their absenting; and also a copy of such order shall within the time aforesaid be posted up as after mentioned (that is to say) a copy of every such order made in his Majesty's High Court of Chancery, Court of Exchequer, or the court of the duchy chamber of *Lancaster*, at *Westminster*, shall be posted up in some public place at the Royal Exchange in *London*; and a copy of every such order made in any of the Courts of Equity of the counties palatine of *Chester*, *Lancaster* and *Durham*, or of the great sessions in *Wales*, shall be posted up at some public place in some market town within the jurisdiction of the court by which such order was made, and nearest to the place where such defendant or defendants respectively made his, her or their usual abode as aforesaid, such place of abode being also within the jurisdiction of the said court; and if the defendant or defendants do not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of such publication of such order as aforesaid, the court being satisfied of the truth thereof may order the plaintiff's bill to be taken *pro confesso*, and make such decree thereupon as shall be thought just, and may thereupon issue process to compel the performance of such decree, either by an immediate sequestration of the real and personal estate and effects of the party so absenting (if any such can be found) or such part thereof as may be sufficient to satisfy the demands of the plaintiff or plaintiffs in the said suit, or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff or plaintiffs, or otherwise, as the nature of the case shall require; and the said court may likewise order such plaintiff or plaintiffs to be paid and satisfied his, her or their demands out of the estate or effects so sequestered, according to the true intent and meaning of such decree, such plaintiff or plaintiffs first giving sufficient security in such sum as the court shall think proper, to abide such order touching the restitution of such estate or effects as the court shall think proper to make concerning the same, upon the defendant or defendants appearance to defend such suit, and paying such costs to the plaintiff or plaintiffs as the court shall order; but in case such plaintiff or plaintiffs shall refuse or neglect to give such security as aforesaid, then the said court shall order the estate or effects so sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the court, either by appoint-

Any person not entering appearance within the usual time after subpœna, and justly suspected to abscond to avoid the process, court to fix a day for his appearance, to be inserted in the Gazette and published in the parish church of the defendant, and posted in some public place.

Defendant not appearing,

the plaintiff's bill to be taken pro confesso,

his estate sequestered,

and plaintiff satisfied,

on giving security to the court to defendant's appearance; plaintiff refusing such security, the effects

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ing a receiver thereof or otherwise, as to such court shall seem meet, until the appearance of the defendant or defendants to defend such suit, and his, her or their paying such costs to the plaintiff or plaintiffs, as the said court shall think reasonable, or until such order shall be made therein as the court shall think just.

sequestered to remain under direction of the court.

After first day of Easter term 1732, defendants brought into court by habeas corpus, and refusing to enter appearance, court to enter it for them.

II. And it is hereby further enacted by the authority aforesaid, That from and after the first day of *Easter* term, One thousand seven hundred and thirty-two, if any defendant or defendants, by virtue of any writ of *habeas corpus* or other process issuing out of any Court of Equity, shall be brought into court, and shall refuse or neglect to enter his, her or their appearance according to the rules or method required by the said court, or to appoint a clerk in court, or attorney of such court to act on his, her or their behalf respectively, such court may appoint a clerk in court, or attorney of such court, to enter an appearance for such defendant or defendants respectively, and such proceedings may thereupon be had in the cause, as if the party had actually appeared.

Persons in custody so refusing, to be served with a copy of the decree.

III. Provided always, That if any person, against whom any decree shall be made, upon refusal or neglect to enter his, her or their appearance, or appoint a clerk in court, or attorney to act on his, her or their behalf, shall be in custody or forthcoming, so that he, she or they may be served with a copy of such decree, then he, she or they shall be served with a copy thereof, before any process shall be taken out to compel the performance thereof.

Persons out of the realm affected by such decree, if they return within seven years, to be served with a copy, or in case of death, his heir, &c.

IV. Provided also, That if any decree shall be made in pursuance of this Act against any person or persons being out of the realm, or absconding in manner aforesaid, at the time such decree is pronounced, and such person or persons shall within seven years after the making such decree return or become publicly visible, then and in such case he, she or they shall likewise be served with a copy of such decree within a reasonable time after his, her or their return or public appearance shall be known to the plaintiff or plaintiffs; and in case any defendant against whom such decree shall be made, shall within seven years after the making such decree, happen to die before his or her return into this realm, or appearing openly as aforesaid, or shall within the time last before mentioned die in custody before his or her being served with a copy of such decree, then his or her heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff or plaintiffs, and such heir may be found, or if such heir shall be a feme covert, infant, or *non compos mentis*, the husband, guardian or committee of such heir respectively; or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff or plaintiffs, then his or her executor or administrator (if any such there be) may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff or plaintiffs, that the defendant is dead, and who is his or her heir, executor or administrator, or where he, she or they respectively may be served therewith.

If persons served with such copies, shall not petition a re-hearing of the cause within six months, the decree to be absolutely confirmed, and bar all claiming by them.

V. Provided always, That if any person or persons so served with a copy of such decree, shall not within six months after such service appear and petition to have the said cause reheard, such decree so made as aforesaid shall stand absolutely confirmed against the person or persons so served with a copy thereof, his, her and their respective heirs, executors and administrators, and all persons claiming or to claim by, from or under him, her, them or any of them, by virtue of any Act done or to be done subsequent to the commencement of such suit.

Defendants petitioning a re-hearing within seven years, and giving security for costs, admitted to an-

VI. Provided nevertheless, That if any person, so served with a copy of such decree, shall within six months after such service, or if any person not being so served shall within seven years next after the making such decree, appear in court, and petition to be heard with respect to the matter of such decree, and shall pay down or give security for payment of such costs as the court shall think reasonable in that behalf,

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the person or persons so petitioning his, her or their respective representatives, or any person or persons claiming under him, her or them respectively, by virtue of any Act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined, and such other proceedings, decree and execution may be had thereon, as there might have been in case the same party had originally appeared, and the proceedings had then been newly begun, or as if no former decree or proceedings had been in the same cause.

swer, and the cause to be heard again.

VII. Provided nevertheless, and be it enacted by the authority aforesaid, That if any person or persons, against whom such decree shall be made, his, her or their heirs, executors or administrators, shall not within seven years next after the making of such decree, appear and petition to have the cause reheard, and pay down or give security for payment of such costs as the court shall think reasonable in that behalf, such decree made as aforesaid shall stand absolutely confirmed against the person and persons against whom such decree shall be made, his, her and their heirs, executors and administrators, and against all persons claiming or to claim, by, from or under him, her, them or any of them, by virtue of any Act done or to be done subsequent to the commencement of such suit; and at the end of such seven years it shall and may be lawful for the court to make such further order as shall be just and reasonable, according to the circumstances of the case.

Not appearing within seven years and making such petition, to be absolutely barred.

VIII. Provided always, That this Act shall not extend or be construed to extend to warrant or make good any proceeding against any person beyond the seas, unless it shall appear to the satisfaction of the court by affidavit or affidavits, before the making of such decree, that such person had been in that part of *Great Britain* called *England*, within two years next before the *subpœna* in such suit issued against such person.

Not to affect persons beyond the seas, unless affidavit be made of their being in England within two years before the subpœna.

IX. Provided also, That this Act shall not extend or be construed to extend to warrant or make good any proceeding against any person in any Court of Equity having a limited jurisdiction, unless it shall appear to the satisfaction of such court by affidavit or affidavits, before the making of such decree, that such person had resided within the jurisdiction of such court, within one year next before the *subpœna* in such suit issued against such person.

Not to extend to courts having a limited jurisdiction, unless oath be made of personal residence in such jurisdiction, one year before the subpœna.

[No. XIV.] 7 George II. c. 20.—An Act for the more easy Redemption and Foreclosure of Mortgages.

[Inserted Part I. Class II. No. 28.]

[No. XV.] 12 George II. c. 24.—An Act to empower the High Court of *Chancery* to lay out upon proper Securities any Monies not exceeding a Sum therein limited, out of the common and general Cash in the Bank of *England* belonging to the Suitors of the said Court, for the Ease of the said Suitors, by applying the Interest arising therefrom, for answering the Charges of the Office of the Accountant-General of the said Court.

No. XVI. 4 George III. c. 32.

[No. XVI.] 4 George III. c. 32.—An Act to empower the High Court of Chancery to lay out, upon proper Securities, a further Sum of Money, not exceeding a Sum therein limited, out of the Common and General Cash in the Bank of *England* belonging to the Suitors of the said Court; and for applying the Interest arising therefrom, towards answering the Charges of the Office of the Accountant-General of the said Court.

[No. XVI. a.] 5 Geo. III. c. 28.—An Act to impower the High Court of *Chancery* to lay out, upon Government Securities, a Sum of Money therein mentioned, out of the Common and General Cash in the Bank of *England* belonging to the Suitors of the said Court; and to apply the Interest arising therefrom, towards augmenting the Income of the Masters of the said Court.

Preamble.

WHEREAS by an Act of Parliament, passed in the Twelfth year of the reign of his late Majesty King *George* the First, intituled, *An Act for Relief of the Suitors of the High Court of Chancery*, it was, amongst other things, enacted, That all the money and cash then deposited in the Bank, or that should at any time thereafter be paid into or deposited in the bank, on the account of the suitors of the Court of Chancery, or any of them, or by order of the said court, should be accounted and taken to be one common and general cash, and should be promiscuously issued and issuable when and as the Court of Chancery should direct, for the answering, paying, and clearing, the debts and demands of any of the suitors of the said court: And whereas, from many years' experience, it hath been found, that there always hath been, and there now is, a very large sum of money, belonging to the suitors of the Court of Chancery, which lies dead and unemployed in the Bank: And whereas the offices of the Masters in the Court of Chancery are very ancient, and are offices of great trust and consequence to the suitors of the said court; and the profits belonging thereto are not adequate to the attendance, trouble, and importance, of the said offices: Wherefore, in order to make a further provision for the said offices, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

The High Court of Chancery, impowered to order the placing out occasionally, upon government or other securities, 80,000*l.* out of the general cash in the Bank belonging to the suitors of the

That out of the cash that now lies, or shall hereafter lie, dead and unemployed in the Bank of *England*, belonging to the suitors of the Court of Chancery, a sum not exceeding eighty thousand pounds shall and may, by virtue of any order or orders of the said court, to be made for that purpose, from time to time be placed out in one entire sum, or in parcels, on such government or parliamentary securities, as in and by such order or orders shall be directed; to the intent that the interest and annual produce, arising from the money so to be placed out as aforesaid, may be applied for the purposes hereinafter mentioned; and that the said Court of Chancery may, by order or orders of the said court, from time to time change the security or securities on which the said monies shall be so placed out as the said court shall think expedient.

court; and to change the securities as shall be expedient;

the interest to be received

And be it further enacted, That the interest and annual produce arising from the said securities shall, from time to time, be received by

No. XVI a. 5 Geo. III. c. 28.

the Governor and Company of the Bank of *England*, and placed to the credit of an account to be raised in the books kept there for the suitors of the said court, of interest arising from money placed out in pursuance of this Act; and that out of such interest and annual produce there shall be paid, by half-yearly payments, by the Governor and Company of the Bank of *England*, by virtue of an order or orders of the Court of Chancery to be made for that purpose, the annual sum of two hundred pounds to each and every of the eleven of the masters in ordinary of the said Court of Chancery, free from parliamentary taxes; which said annual sums shall commence from the fifth day of *January*, in the year of our Lord One thousand seven hundred and sixty-five; and that the residue of the interest and annual produce arising from the said securities, shall be accounted for, and taken, as part of the common and general cash of and belonging to the suitors of the said Court of Chancery; and shall be issued and applied pursuant and according to the directions of the before recited Act of Parliament.

and accounted for by the bank; and 200*l.* per annum to be paid thereout half-yearly, by an order of Court of Chancery, to each of the eleven masters of the court;

to commence from 5 *Jan.* 1765; the surplus money to go to, and be accounted as part of, the general cash of the suitors.

Provided always, and be it further enacted and declared, That if, at any time hereafter, the whole, or any part of the said sum of eighty thousand pounds, shall be wanted, to answer any of the demands of suitors of the said Court of Chancery, then, and in such case, the said court may and shall direct the same, or any part thereof, to be called in, or the securities on which the same shall be placed to be disposed of, in order that the suitors of the said court may, at all times, be paid their respective demands, out of the common and general cash belonging to such suitors.

If the whole or part of the sum so placed out to interest, shall be wanted, the court may call in the same, &c. that the suitors demands may be paid.

[No. XVII.] 9 George III. c. 19.—An Act to empower the High Court of *Chancery* to lay out, upon Government Securities, a further Sum of Money, not exceeding a Sum therein limited, out of the common and general Cash in the Bank of *England* belonging to the Suitors of the said Court; and to apply the Interest arising therefrom towards answering the Charges of the office of Accomptant-General of the said Court.

[No. XVIII.] 32 George III. c. 42.—An Act to empower the High Court of *Chancery* to lay out a further Sum of the Suitors' Money upon proper Securities, and for applying the Interest towards discharging the Expenses of the Office of the Accountant-General, and for building Offices for the Masters in Ordinary in Chancery, and a Public Office for the Suitors of the said Court, and Offices for the Secretaries of Bankrupts and Lunatics, and for building Repositories for securing the Title Deeds of the Suitors of the said Court, and the Records and Proceedings of the Commissioners of Bankrupts and Lunatics.

[No. XIX.] 36 George III. c. 90.—An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities

No. XIX. 36 Geo. III. c. 90.

transferable at the Bank of *England*.—[14*th May* 1796.]

[Inserted Part III. Class XI. No. 1.]

[No. XX.] 39 & 40 George III. c. 36.—An Act to enable Courts of Equity to compel a Transfer of Stock in Suits, without making the Governor and Company of the Bank of *England*, or the United Company of Merchants of *England* trading to the *East Indies*, or the Governor and Company of Merchants of *Great Britain* trading to the *South Seas* or other parts of *America*, Party thereto.—[1*st May*, 1800.]

39 & 40 George III. c. 36.

Any court of equity may order the Bank of England to suffer a transfer of stock to be made, or to pay dividends belonging to or standing in the names of any party to a suit, or issue an injunction to restrain such transfer or payment, although the Bank be not a party, &c.

'WHEREAS great expense arises in suits in Courts of Equity, from the practice of making the Governor and Company of the Bank 'of *England* parties thereto, for the mere purpose of compelling or 'authorising the said corporation to suffer any transfer of stock stand-'ing in their books to be made which justice may require:' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for any of his Majesty's Courts of Equity, before or upon hearing any cause depending therein, to order the Governor and Company of the Bank of *England* to suffer a transfer of stock standing in their books to be made, or to pay any accrued or accruing dividends thereon, belonging to or standing in the names of any party to a suit, as such courts may deem just; or to issue an injunction to restrain them from suffering any transfer of such stock, or from paying any dividends or interest accruing or accrued thereon, although such governor and company are not parties to the suit in which such decree or order shall be made; such courts being satisfied by the certificate of the accountant of the said corporation, duly signed by him as hereinafter is directed, that the stock required to be transferred is standing in their books in the name of the persons or person required to transfer the same, or of the persons or person to whom they or he are or is the legal representative; and that after due service of a short order upon the said governor and company, or their proper officer, which shall contain no recital of their pleadings, or other matter than the title of the cause, and the ordering part of such decree or order which respects the said governor and company, and for which the sum of eighteen shillings, and no more, shall be paid, like process shall issue to enforce such order or decree as to enforce them against any party to a suit depending in such court.

On request of the clerk in court and solicitor of the party, the Bank shall deliver a certificate stating the amount of such stock or dividends, &c. for which the fees herein specified shall be paid.

'II. And for the better enabling any party to a suit to obtain and 'produce such certificate in court,' Be it enacted, That upon request in writing signed by the clerk in court (or other officer answering thereto) and the solicitor concerned in the cause for the party applying, which shall state the cause, and for what parties they are concerned, the Governor and Company of the Bank of *England* shall deliver, or cause to be delivered, to the said clerk in court or other officer and solicitor, or one of them, a certificate signed by their accountant, stating the amount of such stock or dividends, and in whose names or name such stock is standing in their books, and if it be particularly required (but not otherwise) when such stock or any part thereof was transferred, and by whom; for the signing of which request in writing, there shall be paid to such clerk in court, or other officer, a fee of six shillings and eight pence, and no more, and to such solicitor, for the drawing, copying, and delivering at the Bank, a fee of thirteen shillings and four-pence, and no more, and to the officer making and delivering such certificate, a fee of two shillings and six-pence, and no more: Provided

nevertheless, That nothing herein contained shall extend to any case where any further discovery is wanted than what is hereinbefore expressly mentioned, nor to any case where the said governor and company claim any interest in or lien upon the said fund, but that in such cases it shall be necessary to make them a party to such suit as if this Act had never been made; and that if any special matter shall arise, which, in the opinion of the said governor and company, shall affect their interests, or which might be objected against suffering such transfer of stock or payment of dividends, it shall be lawful for them to state such matter to the court by motion or petition in such suit, and that execution of process to compel such transfer or payment, shall be suspended until final order shall be made thereon.

Act not to extend to any further discovery than herein mentioned; nor to any case where the Bank claim an interest in the fund; and the Bank may state their objections to any transfer by motion or petition.

III. And be it further enacted, That in all suits now depending, in which the said governor and company may have put in their answer, not claiming any interest in or lien upon the stock required to be transferred, no further proceeding shall be had against them as a party to such suits, but that the bill shall stand dismissed as against them in such suits; and that in all such suits an order may be made, upon motion or petition as of course, for the taxing of their costs already incurred, and for immediate payment thereof by the plaintiffs in any such suits, or any of them, subject however to any further order as between the other parties to such suits respecting the final payment of such costs, as by the court in which any suit may be depending shall be deemed just.

In suits now depending where the Bank have put in their answer, not claiming any interest in the stock required to be transferred, proceedings shall be stopped and the bill dismissed, &c.

IV. And be it further enacted, That all the several regulations and provisions hereinbefore enacted shall extend, *mutatis mutandis*, to every case where the united company of merchants of *England* trading to the *East Indies*, or the Governor and Company of Merchants of *Great Britain* trading to the *South Seas* or other parts of *America*, have any stock standing in the books of such respective corporations, which may now be or hereafter may become the subject of any suit in equity, or incidental thereto; saving to the said corporations respectively the like right of being made a party, or applying by motion or petition, in such suits as is before reserved or given to the Governor and Company of the Bank of *England*.

The provisions aforesaid shall extend to the East India Company and the South Sea Company, where they have stock standing in their books, which may become the subject of a suit in equity.

[No. XXI.] 39 & 40 George III. c. 56.—An Act for Relief of Persons entitled to entailed Estates to be purchased with Trust Monies.—[*20th June* 1800.]

[Inserted Part II. Class I. No. 30.]

[No. XXII.] 41 George III. c. 90.—An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same.—[*2d July* 1801.]

[Inserted ante, Class XXIII. No. 21.]

[No. XXIII.] 45 George III. c. 75.—An Act to remove Doubts touching Appointments to certain Offices in the Court of Chancery made during the Va-

No. XXIII. 45 Geo. III. c. 75.

cancy of the Office of Register and Keeper of the Register and Registers in that Court.—[*27th June* 1805.]

P. [No. XXIV.] 45 George III. c. 124.—An Act to amend an Act, passed in the Fourth Year of His present Majesty, intituled, "An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming Insolvent;" and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament.—[*12th July* 1805.]

45 George III. c. 124.

Appearances may also be put in for defendants having privilege of Parliament, in Courts of Equity, on return of process of sequestration.

'IV. AND whereas in many cases, persons having privilege of Parliament are named as defendants in suits instituted in Courts of 'Equity against them, either alone or jointly with other persons, for 'enforcing against them, demands and duties cognizable in Courts of 'Equity, and in some cases such defendants, having privileges of Par'liament, have stood out to the return of process of sequestration is'sued against them for enforcing appearance, and such process of se'questration hath not been found sufficient to enforce such appearance;' Be it therefore enacted by the authority aforesaid, That, from and after the passing of this Act, in case any defendant having privilege of Parliament shall, upon a return of process of sequestration issued against him for not putting in an appearance to any original or other bill of complaint instituted against him in a Court of Equity for enforcing discovery and relief, or discovery alone (as the case may be)* that then and in such case such court upon producing the return of such sequestration in court may, on the motion or other application of the plaintiff in such cause, appoint a clerk in court to enter an appearance for such defendant so having privilege of Parliament, and such proceedings may be thereupon had in the cause as if the party had actually appeared.

[*Query, *neglect to appear.*]

In default of answer to bill in equity against persons having privilege of Parliament, bill shall be taken *pro confesso.*

'V. And whereas in many cases it is necessary on the part of the per'sons having legal rights against persons having privilege of Parlia'ment, to proceed by bill in equity against such person so having 'privilege of Parliament, to obtain from them discovery, on oath, 'of facts intended to be used or given in evidence in courts of law 'against the persons making such discovery, and in cases where such 'persons having such privilege as aforesaid, shall stand out process of 'contempt, parties entitled to such discovery against them have not suf'ficient means of compelling or obtaining the same in all cases;' Be it therefore enacted by the authority aforesaid, That, from and after the passing of this Act, when any defendant, having privilege of Parliament, shall have appeared to any bill filed against him, seeking a discovery upon oath, or when an appearance shall have been entered for such defendant according to the provisions aforesaid, and such person shall refuse or neglect to put in his answer to such bill within the time for that purpose allowed by the rules and orders of such court, that then it shall and may be lawful for the plaintiff in such suit to apply to the court for an order, that such bill shall be taken *pro confesso* against such defendant, and upon such application such Court of Equity shall make an order, that such bill shall be taken *pro confesso*, unless the defendant shall, within eight days after being served with such order, shew good cause to the contrary.

Such bill shall be read in evidence as an

VI. And be it further enacted, That when and so soon as any such order shall have been pronounced by any such Court of Equity for taking such bill *pro confesso*, that then such bill in equity so taken *pro confesso*

shall be taken and read in any court of law or equity, as evidence of the facts and matters and things therein contained, in the same manner as if such facts, matters, and things had been admitted to be true by the answer of the defendant put into such bill, and such bill so taken *pro confesso* shall be received and taken in evidence of such and the same facts, and on behalf of such and so many persons, as the answer of the defendant to the said bill could and might have been read and received in evidence of, in case such answer had been put in by the defendant thereto, and had admitted the same facts, matters, and circumstances, as in such bill stated and set forth.

No. XXIV. 45 Geo. III. c. 124.

answer admitting the facts.

[For the other parts of the Act vide ante, Class V. No. 2.—Post, Class XXVI.]

[No. XXV.] 47 George III. st. 2. c. 40.—An Act to alter the Practice of Courts of Equity, in Suits in which Members of Parliament are Defendants.—[*8th August* 1807.]

THAT Justice may be administered more equally in point of expense, amongst His Majesty's subjects; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, when any bill of complaint or information shall be exhibited in any Court of Equity, against any knight, citizen, or burgess, of the House of Commons, it shall not be necessary to leave a copy of the bill or information with the defendant, or at his house or lodging, or last place of abode, as is now used and practised; but it shall be lawful for the person or persons exhibiting such bill or information to proceed, for want of appearance or answer, to sequestrate the real and personal estate of such knight, citizen, or burgess of the House of Commons, although no copy of the bill or information shall have been left with him, or at his house or lodging, or last place of abode, in the same manner as he might before the passing of this Act have proceeded, after such defendant had had a copy of the bill or information delivered to him, or left at his house or lodging, or last place of abode.

47 George III. stat. 2. c. 40. When any bill shall be exhibited in a court of equity against a member of the House of Commons, it shall not be necessary to leave a copy thereof with the defendant before sequestration for non-appearance.

[No. XXVI.] 47 George III. st. 2. c. 74.—An Act for more effectually securing the Payment of the Debts of Traders.*—[*14th August* 1807.]

* This Act was introduced on the motion of a gentleman, to whom the country is particularly indebted for the attention which he has devoted, in numerous instances, to the general improvement and amelioration of a legislative system, but whose efforts for that purpose have excited no common portion of opposition.

In the preceding Session of Parliament, he had endeavoured to introduce a general enactment for subjecting freehold property to the payment of simple contract debts; a proposal which met with a strong, and, as it is well known, a successful opposition in the House of Commons; in which a number of persons of high professional rank, and whose juridical talents and character are of the most superior order, took a principal share. Upon the failure of that proposal, the present more limited measure was introduced, and was suffered, as far as my recollection serves, to pass without any material opposition. The general proposal has been since several times renewed. Upon the first occasion it encountered a considerable opposition in the House of Commons, from different members connected with the profession of the law, but received the sanction of a majority of the House, and was afterwards more successfully resisted in the House of Lords. In the Session of Parliament which is still continuing (55 George III.), it was suffered to pass the Commons without comment or observation; and I had contemplated, with some satisfaction, the probability of including an enactment by which it had been carried into effect in the present collection: but it has again failed, after a short and summary discussion in the House of Lords.

In the ephemeral accounts of the proceedings which took place upon its introduction, I

No. XXVI. 47 Geo. III. st. 2. c. 74.

'WHEREAS it is expedient that the payment of the debts of persons in trade should be secured more effectually than is done by 'the laws now in force;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, when any person, being at the time of his death a

noticed a declaration of the learned member whose exertions upon the subject have been hitherto unsuccessful, that if the measure was rejected upon that occasion, he should never afterwards come forward as its proposer; but, from the brief view which has been taken of the subject, it is evident that considerable progress has been made in removing the feelings of repugnance by which the proposed alteration of the law has been hitherto resisted; and a period may perhaps arrive, when the attention of the legislature may be again called to the subject, with the reasonable hope and prospect of a different result.

Feeling as I do, upon a long and habitual consideration of the question, that no alteration of the law would be more important and salutary in its consequences, I propose to dilate upon the subject with some degree of particularity; but conscious that those, by the influence of whose opinions the change has been hitherto successfully resisted, are the persons who by their stations, their learning and their respectability, are most peculiarly qualified to challenge whatever deference and assent can be justly paid to the names and characters of individuals, I trust that, in the freedom of discussion, I shall not forget the language or sentiments of respect.

I hope it will not be a deviation from the profession which I have made, to avow, that I do not consider a general and indiscriminate appeal to the wisdom of our ancestors, and an equally general and unqualified invective on the dangers of innovation, as arguments which can have much weight in the scale of rational inquiry. I am as well aware as those from whom I most differ in opinion with regard to the present question, of the advantage of adhering to an established and existing system, until strong and adequate reasons appear to justify or require a deviation from it. But the mere and indiscriminate reliance upon the topics which have been alluded to, is not so much calculated to command assent, as to stifle enquiry; and the principle of opposition which they import is equally applicable to all proposals whatever, and however beneficial or injurious they may happen individually to be: and if this sentiment had been at all times attended with the same commanding influence which it at present seems to possess, it would have presented an insuperable obstacle to the most salutary and beneficial improvements which have taken place in our legislative system; and in no instance more strongly and decidedly so, than in the general abolition of those feudal tenures, of which the subsisting law upon the immediate matter in discussion was manifestly the emanation and result.

Of the moral obligation of individuals to discharge the engagements which they have contracted, there can only be one opinion; and as little doubt can be entertained of the general propriety of giving to such obligation the force and sanction of law, when the nature of the subject will admit, and there are no adequate reasons of public utility to the contrary.

Accordingly, in all countries, the enforcing the performance of contracts, and more particularly the discharge of debts recognized by the law, is a very principal object of jurisprudence; and no person, either morally or legally speaking, is considered as the real owner of property to a greater amount than that which exceeds the total amount of his obligations: and the real question under consideration is, whether there are any adequate motives of civil policy for conferring on those who may succeed, by reason of death, to the rights of the deceased in property and advantage in respect of particular effects, an exemption which did not belong to the author of their claim; for casting a benefit upon the representative which could not have been enjoyed by the persons whom he represents; and for giving an adventitious gain without any claim of merit, and resulting from the loss and detriment of those who are not chargeable with any greater culpability than the want of sufficient acuteness and vigilance in the preservation of their own immediate interests? The maxims which, though forming part of a particular system of jurisprudence, are manifestly founded upon principles of universal application—"*Hoc natura æquum est, neminem ex alterius detrimento et injuria locupletiorem fieri;*" and, "*Melius est favere repetitioni quam adventitio lucro;*" will, by every unsophisticated mind, be admitted to supply the general rule; and the enquiry is reduced to an examination of the motives which are considered as sufficient to warrant an exception.

I do not rely upon any other system of law as an absolute authority; but conceive it is an argument of no inconsiderable weight, that we are not acquainted with any other system of jurisprudence, in which the whole property of a person deceased was not subject to answer the whole amount of his debts.

According to the Roman law, the persons who fell within the description of *sui et necessarii hæredes*, being the issue of the deceased, remaining under his authority, and not emancipated, could not renounce the character of heirs, and were strictly chargeable with the debts; but by the prætorian law, which was analogous to our system of equity, such heirs were permitted to abstain from the inheritance,

trader within the true intent and meaning of the laws relating to bankrupts shall die seised of or entitled to any estate or interest in lands, tenements, hereditaments, or other real estate, which he shall not by his last will have charged with or devised subject to or for the payment of his debts, and which before the passing of this Act would have been assets for the payment of his debts due on any specialty, in

No. XXVI. 47 Geo. III. st. 2. c. 74.

When a trader shall die entitled to any real estate in lands, &c. the same shall be assets to be administered in equity for payment of all his debts, &c.

and thereby release themselves from the obligation. See Institutes, lib. 2. tit. 19. Other persons, denominated *exteranii hæredes*, whether instituted by will or taking by intestacy, had a certain period for deliberation; but if they accepted the inheritance, they were chargeable with the obligations of the deceased, without regard to the amount of his effects. The Emperor Gordian introduced an exception in favour of soldiers, who, if they incautiously took upon themselves the succession, were liable only to the extent of the property; and Justinian extended this privilege to all persons in general by law, Code, lib. 6. tit. 30, *de Jure deliberandi*, law 22; whereby he introduced the benefit of inventory, under which, if the heir, within thirty days, began with proper formalities to make an inventory of the estate of the deceased, and completed it within sixty days more, he was only chargeable with the amount of the property belonging to the deceased. The period was extended to a year in case of the absence of the heir. In case the inventory was not made within the term and in the manner prescribed, the heir was deemed to have accepted the succession generally, and was liable, without distinction, to the debts of the deceased. And this system has been followed in most of the modern states of Europe which have adopted the general principle of the Roman law. Such was the law of France previous to the Revolution, although differently modified in different provinces. In the more recent code several very judicious regulations are adopted, with respect to the manner of taking and verifying the inventory of the property.

The same law prevailed in the United States; Vinnius ad Inst. 2, 19. It is part of the Prussian code; Part 2, B. 7, tit. 15. It is the law of Scotland; Erskine's Principles, B. 3, tit. 8. By the general law of Germany, the heir is not bound beyond the amount of the successions, although he has not made an inventory; Heneccius El. Juris Germanici: but in no country, except our own, does it appear to have been the law, that the property of the deceased should be enjoyed without being subject to the charge of his obligations. In most of the countries which have been mentioned, the feudal system, from which the exemption of lands in England is evidently derived, remained in vigour, with reference to the exercise of seignioral rights, long after its direct operation had, in this country, been put an end to by legislative authority.

With regard to the progress of the law connected with this subject, in our own country, it is manifest that, in the early periods of our history, the transactions of commerce were of very limited importance, and that the ability to perform the feudal services was the object principally regarded by the law, with respect to the tenure of lands; but as the magnitude and consideration of subjects connected with personal property and contracts advanced, the legislature shewed a corresponding disposition to support their consequence. The introduction of the writ of elegit, subjecting the moiety of lands to execution in satisfaction of judgments, by the statute of 13 Ed. I. at a period when feudal tenures and services retained their primary importance, was a bold deviation from the subsisting law, and a manly sacrifice of prejudice to justice. The same spirit was evinced by the Institution of Statutes Merchant in the same year, and of Statutes Staple in the reign of Ed. III.; and was carried to a greater extent by 23 Henry VIII. which extended the benefit of the Statute Staple to all the King's subjects in general.

The reign of Henry VIII. is also distinguished by two other important novelties; or, as perhaps they would be called by those who in that day were fearful of calling in question the wisdom of their ancestors, innovations—the Statute of Wills, by which a person was enabled voluntarily to do justice to the claims of his creditors, in subjecting his lands to the payment of debts; and the introduction of the bankrupt law.

The Statute 34 and 35 Henry VIII. c. 4, by which this last important alteration in the law was established, gave power to certain great officers of state "to take order respecting the bodies, *lands* and goods of those who, craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any their creditors their duties, but at their own wills and pleasures consume the substance obtained by credit of other men for their own pleasure and delicate living, against all reason, equity and good conscience."

It is observable that this Act is not confined, like the more recent Statutes respecting bankruptcy, to the case of persons engaged in trades of a particular character and description, but is generally applicable to all debtors whatever: and notwithstanding all the commendation which may have been bestowed upon later Statutes, on account of their more confined and limited operation in this respect, I cannot but think that the generality of the original Statute was more conformable to the principles of justice and utility.—See Letter to Sir Samuel Romilly, (subjoined to Class XXVIII. post.) Sec. III.

The principal view of the Statutes of Eliza-

No. XXVI. 47 Geo. III. st. 2. c. 74.

which the heirs were bound, the same shall be assets to be administered in Courts of Equity for the payment of all the just debts of such person, as well debts due on simple contract as on specialty; and that the heir or heirs at law, devisee or devisees of such debtor, shall be liable to all the same suits in equity, at the suit of any of the creditors of such

beth and James upon the subject of bankruptcy seems to have been to frame, with respect to the persons who were the objects of those statutes, a more detailed and particular provision for giving effect to the important principles established by the Statute of Henry VIII.

It is not material, for the present purpose, to advert more particularly to these statutes, than to observe that, when personal transactions and engagements were, as compared to the present period, in their infancy, and the old relations of lord and tenant, though of diminished, were of considerable importance, the relief of creditors was considered as a matter of so much consequence, that not only the freehold and copyhold estates were subjected to the operation of the bankrupt law, but that, by the Statute of 21 Jac. I. all estates tail, of which the bankrupt had the power of disposition, were also placed in the same predicament.

The next provision which it occurs to me to notice is that in the Statute of Frauds, subjecting trust estates to the payment of specialty debts. This was succeeded by the Statute against fraudulent demises, 3 and 4 William and Mary, c. 14, which, giving the same remedy to a specialty creditor against a devisee as against an heir, so far favours the general object of charging lands with the payment of simple contract debts, as to make an exception in respect of lands devised for the payment of any just debts; and the Courts of Equity, in supporting the provisions of the exception, have shewn a disposition to place specialty and simple contract creditors upon an equal footing, by not permitting the former to derive any benefit from a general devise for the satisfaction of debts, until the latter have been placed upon an equal footing with them, in respect of the satisfaction received from the personal assets.

The disposition to favour the subjecting real estate to the payment of debts was further manifested by the Statute 25 Geo. II. c. 6, by which, in consequence of the doubts that had existed respecting the term *credible witnesses* in the Statute of Frauds, it is provided, that creditors who had attested or should thereafter attest wills, charging lands with the payment of debts, should be admitted as witnesses to such wills.

The same spirit prevailed in the compulsory clauses of 32 George II. c. 5, (usually called the Lords' Act) and the several Acts for the extension thereof, by which debtors in execution are compellable, at the instance of their creditors, to make a conveyance of all their property, under pain of transportation. It would have seemed to be a more commodious course to have given an immediate remedy against the property itself. I remember an instance at Chester Assizes, of a person receiving sentence of transportation, for obstinately refusing to comply with the provisions of this Act.

The Statute to which this Note is subjoined completes the series of legislative enactments connected with the subject under discussion.

The courts of justice have certainly been in no wise backward in giving full effect to all the dispositions, either of the law itself, or of individual testators, in favour of the general object which is the subject of consideration. Lord Mansfield (who, after allowing every reasonable exception to some of his particular views, was, beyond all question, one of the most enlightened magistrates that ever adorned the English tribunals) observed in the famous case of Wyndham *v.* A. Chetwynd, 1 Burr. 430 —"Every honest man should make that charge [for the payment of debts] in his will. He who omits it may be said to sin in his grave."

I have already adverted to the disposition of courts of equity to afford simple contract creditors the full benefit of a charge on lands, by the distinction established with respect to legal and equitable assets.

In the construction of wills the same inclination has been very strongly evinced. In Thomas *v.* Brittnell, 2 Ves. 313. Sir J. Strange, Master of the Rolls, speaking of a particular question of construction, said, that he had no doubt but that the real estate would be subject to the payment of debts, not from any express mention made, that they should be a charge on the real estate, but from that construction the court makes for the benefit of creditors, and that men should not sin in their graves.

The same disposition was recognized and acted on by Lord Thurlow in Ridney *v.* Cousmaker, 1 Vesey, jun. 440, where he said—"For subjecting land to debts very little is sufficient. The court has leaned that way, if we may be allowed to say so." Lord Loughborough, on the rehearing of the same cause, 2 Vesey, jun. 268, said—"There is no reason, in my mind, to doubt that the court has put a construction upon this will, not only consistent with the principles of natural justice, but with the intention of the testator. I cannot impute to him the disposition his family imputes to him, to die, leaving an ample fortune, without taking care to provide for the payment of his debts: less words would enable the court to say he intended the property to be taken as personal, especially for the pious purpose of paying his debts."

The inclination of the courts of equity in this respect was still more strongly marked in the case of Kightley *v.* Kightley, 2 Ves. jun. 328, where the same words in the same sentence, "First, I will and direct that all my debts, legacies, and funeral expences shall be

debtor, whether creditors by simple contract or by specialty, as they were before the passing of this Act liable to at the suit of creditors by specialty, in which the heirs were bound: Provided always, that in the administration of assets by courts of equity, under and by virtue of this Act, all creditors by specialty, in which the heirs are bound, shall be paid the full amount of the debts due to them, before any of the creditors by specialty in which heirs are bound shall be first paid.

No. XXVI. 47 Geo. III. st. 2. c. 74.

Creditors by specialty in which heirs are bound shall be first paid.

fully paid," applied without any distinction to debts and legacies, were held to constitute a charge for the debts and not for the legacies. The Master of the Rolls (Sir R. P. Arden) said, "The principle is perfectly different, the one being purely voluntary, the other obligatory. Whenever a man makes a will, he is supposed to do that which conscience obliges him to do; and if he shews an intention that his debts shall take place of every other disposition, and that he meant they should be paid, the court will strictly enforce that intention. The same principle will not apply to legacies." And I apprehend that this decision is admitted in the practice of courts of equity, as a clear and undoubted authority.

There are other important and well known instances, in which courts of equity have gone still farther in effectuating the same general purpose. By the law of the land, a copyhold estate cannot (or at least when this note was first written could not) pass by will, unless there is a previous surrender to uses; but where the intention is the payment of debts, and in some other favoured cases, the want of such surrender is supplied, and the heir is compelled to give effect to a disposition which, by the rules of law, is absolutely inoperative. So in case of supplying the defective execution of a power, an authority is given to charge or dispose of an estate in a certain mode, and with circumstances which are attached to the authority as conditions for its exercise; and as such, are by the person creating the authority, essentially incorporated with, and form a constituent part of, the authority itself. But when payment of debts is the purpose for which the authority is exercised, the conditions attached to the exercise of it are disregarded, and treated as absolutely immaterial.

But the most striking instance of the interference of courts of equity upon this subject, is in cases where a party has a general power of appointment, of which, if it is unexecuted, the creditors can have no advantage; but which, if actually executed in favour of other parties, the creditors are entitled to the benefit of in opposition to the actual objects of the appointment: so that an Act, without the voluntary exercise of which the creditors can have no claim upon the property in question, is laid hold of for their benefit, in direct contravention of the purpose and intention for which alone it has been performed.

It would be foreign from my present purpose to enquire whether the several doctrines above enumerated as prevailing by courts of equity, and which are matters of daily and familiar occurrence, are consistent with the fair and proper limits of a purely judicial authority. I think that, in later times, any attempts of an analogous nature would have been discouraged, as too much invading the province of legislation. The only reason for referring to them upon the present occasion, is the evidence which they furnish of the great importance that our tribunals must have attached to the end, when they have been induced to sanction such very strong and extraordinary means to effectuate it; clearly proving that the object, which so many unsuccessful efforts have been made to attain, has not only the support of theory and speculation, but the more favourite sanction of authority; and however questionable the original introduction of these peculiar doctrines of courts of equity may have been in principle, I am not aware that the effects of them, in point of experience, have been found to be prejudicial.

After so many instances of the interference of the legislature, and the disposition of the judicial tribunals to effectuate the purpose of subjecting the whole property of a debtor to the honest claims of his creditors, it might reasonably have been expected, that a direct proposal to accomplish so beneficial an object by the general operation of the law would have been received with considerable approbation. It would certainly have been difficult to anticipate that it would have had to encounter the opposition which it has in fact experienced.

As a motive for the proposed alteration of the law, strong instances have been cited, in which persons contracted debts to a large amount, for the purpose of acquiring property in land; and in order to secure the acquisition to their posterity, have terminated their lives by acts of suicide. But if only cases of this description, or others having any analogy to it, were to be guarded against, so rare a mischief might be permitted to remain without any material detriment to the community. From the attention which I have given to the matter under discussion, in adverting to the testamentary dispositions which have been the subject of judicial inquiry, as well as to those which have fallen under my own observation, during a long connection with the profession of the law, I am satisfied that the instances in which a debtor purposely and deliberately sacrifices the interests of his creditors to the object of enriching his family are very unfrequent indeed, and that the failure of justice to the creditors is almost invariably occasioned by mere delay and inattention; by a confidence in the adequacy of the funds which are legally applicable to the satisfaction of creditors; or by the want of technical skill in the persons by whom the instruments of testamentary disposition are prepared; and that, in adopting the proposed

No. XXVI. 47 Geo. III. st. 2. c. 74.

tors by simple contract or by specialty in which the heirs are not bound, shall be paid any part of their demands.

II. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be deemed or construed to extend to repeal, or alter, an Act of Parliament made in *Ireland* in the thirty-third year

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alteration, the law would, in a great majority of cases, accord with the wishes which the deceased owner of the property would really have entertained.

It remains to consider the special reasons adduced for resisting an alteration of the law, the effect of which would apparently be to complete and perfect that system of substantial justice, which the several statutes and judicial determinations that have been alluded to have so manifest a tendency to promote.

Having already disposed of the mere common place invective upon the mischiefs of innovation, the first objection that occurs, and the one which is most insisted upon, is, "That the creditors have no reason to complain, as they could not, according to the existing law, have computed upon having any claim on the real estates of their debtors after their decease; that it is their own fault that they did not take care to procure securities of a higher nature; and that, "*Vigilantibus, non dormientibus, jura subveniunt.*"

Strongly as this objection has been urged, and much as it has been insisted upon, it does not appear to me to be of very considerable weight. In the ordinary transactions and business of society, it is necessary that persons should follow the ordinary course of proceeding; and the excessive precaution which would impede the business of life by minute and intricate calculations on the several processes of the law, or on the possibility of the death of a debtor before the discharge of his debt, upon his being insolvent in respect of personal assets, but entitled to adequate freehold property, which, by reason of his intestacy, or his omission to make a just provision for the payment of his debts, is not available, is a caution which would not be very beneficial to society, and would manifestly be detrimental to the individual.—Engagements are contracted with reference to the general expectation of their being performed, and the general legal powers of enforcing their performance. That it is meet and expedient that they should be performed, is an undisputed and self-evident proposition. That the legislature and courts of judicature have acted upon the principle of enforcing and facilitating their performance, is manifest from the sketch which has been traced of their proceedings. It is readily admitted that when, of two innocent persons, a loss and detriment must necessarily fall upon the one or the other, the advantage should be fairly given to him who has used the greatest degree of vigilance, by either taking a specific security, or an obligation of a higher nature; but when the question is entirely between a case of loss, detriment and prejudice on the one side, and a purely adventitious gain and benefit on the other, it is very difficult to discern an adequate reason for subjecting the creditor, who has merely omitted to take an unusual and extraordinary, and, perhaps, an inconvenient precaution, to the penalty of forfeiting his just and equitable rights, for the mere purpose of enriching the heir or devisee of a deceased debtor, whose property would have been legally subjected to the discharge of his obligations, if his creditors had found it necessary to have had recourse to legal proceedings against him, and had brought them to a conclusion during his life. In short, there does not appear, in the maxim which has been quoted, any adequate reason to decline doing that justice by the general disposition of the law, which is so much encouraged and promoted as resulting from the particular dispositions of the individual, or for involving an honest creditor in loss and ruin, in order to constitute an opulent heir to an insolvent ancestor.

It has been further urged against the measure in question, that if the principles upon which the alteration of the law is proposed are admitted, they would equally extend to the cases of estates tail and copyholds; but certainly the extension of the measure to these would not be a necessary consequence of its application to freehold property. If it is wise and politic that these estates should continue to be exempt from liability to specialty debts, there certainly would be no apprehension of subjecting them to debts by simple contract. I am not aware that any public inconvenience has arisen from these estates having been made subject to the operation of the bankrupt laws, of which there has now been an experience of nearly three centuries. I certainly think it would be a material improvement of the law, if copyhold estates were equally liable to the process of the law with estates of freehold; the substantial interests of the lord being effectually protected. Estates tail stand upon a particular footing; and I am not at present prepared to state that the extension of the law to them would upon the whole be a desirable measure.

If the matter were reduced to the dilemma, that either freehold estates in fee simple must be exempt from the general liability, or that entailed and copyhold estates must be subject to it, I conceive that the great principles of utility would be more effectually promoted by the general comprehension of the whole to meet the purposes of justice, than by the general exemption of the whole in respect of the special favour which is claimed in respect of considerations applicable to the particular cases alluded to. But certainly there is no such dilemma in the case; and the general, as well as the particular liability, may be left to stand or fall, according to their own respective merits.

of the reign of King *George* the Second, intituled, "An Act for repealing an Act passed in this kingdom in the eighth year of the reign of King *George* the First, intituled, "An Act for the better securing the Payment of Bankers' Notes, and for providing a more effectual Remedy for the Security and Payment of Debts due by Bankers." No. XXVI. 47 Geo. III. st. 1. c. 74.

Act not to repeal Irish Act of 33 Geo. 2. c. 14.

[No. XXVI. a.] 49 George III. c. 6.—An Act for the Relief of Prisoners in Custody for Non-payment of

The great additional labour which would be imposed on courts of equity is another objection to the proposed liability. I can by no means accede to the principle of this objection; for if the measure in question be in its own nature useful and expedient, the additional labour which may be imposed upon any particular tribunal is not an adequate reason for declining to adopt it; and if the number of judicial and ministerial appointments should be thought inadequate to the performance of the functions which the good of the community may require, an addition may be made, according to the nature and importance of the exigency. The recent appointment of an additional judge in the Court of Chancery appears to me to have been founded upon principles of great expedience; and I am not competent to form a judgment of the particular regulations connected with that appointment. But, waving this discussion, and admitting the objection to be just in point of principle, I think it is unfounded in respect of probability, and that a direction so perfectly of course as the taking an account of real and personal assets, and specialty and simple contract debts, could not reasonably be expected to impose such an additional burden upon the judges of courts of equity, as should prevent the adoption of a measure, admitted in other respects to be salutary and beneficial.

The inquiry as to the existence or non-existence of debts which are claimed as affecting property already liable, certainly forms no very great proportion of the business by which the judicial department of our courts of equity is at present occupied.

The only remaining objection which I am aware of is founded upon a regard to the trial by jury, and the inexpedience of any measure which may give an accession of employment to tribunals in which that mode of inquiry does not prevail. Important and invaluable, however, as this course of proceeding unquestionably is, within its proper sphere and limits, it would be carrying our veneration for it much too far, to object to any other mode of investigation for the accomplishment of an object admitted to be beneficial in its nature, and for which such trial is confessedly inadequate.

The trial by jury, by some of its essential constituents, can only be applied to a conflict between two contending parties upon precise and definite points; and where the object of even such a contest is complicated and multifarious, the limited time which can be devoted to it, renders it in general impossible to do complete and adequate justice; and by a recommendation, having the force of a command, the matter is almost invariably referred to the decision of a private tribunal. But to arrange the various interests of various contending parties, and to ascertain, apportion and administer the common fund in which they have an interest, is a purpose to which the functions of a jury are manifestly inapplicable and inadequate: and in case the relief in question is in itself proper and desirable, it would be a wanton sacrifice of the principal to the accessary, of the end to the means, to withhold the application of it, merely because, from its nature, it cannot be administered in the particular mode which, in other cases of a character perfectly dissimilar, is admitted to be peculiarly beneficial. —Before dismissing this part of the subject, it is a matter not to be overlooked, that, although the general course of relief must necessarily be administered by means of a court of equity, any particular questions respecting the existence or non-existence of a disputed debt, upon which there is a fair and reasonable doubt, is, like all other controverted facts, referred to the proper tribunal of a jury; and that in a manner best calculated to produce a direct and immediate decision upon the very point in controversy, divested of all the adventitious and incidental matter, by which, in other cases, the proper object of the inquiry is liable to be obstructed and embarrassed: and that no such prejudicial consequences are, in point of experience, found to result from the existing administration of the law in respect of debts charged upon real estates by will, as are justly calculated to excite a constitutional jealousy against imposing a similar charge by the general operation of the law.

The preceding observations were committed to writing recently after the rejection of the measure in question, in the session of 1815. The subject was again introduced to the notice of Parliament, in the following session, by the same gentleman who had already made so many unsuccessful efforts respecting it; upon which occasion he took a review of the objections noticed in the preceding observations, in many respects according with that which had occurred to myself. The proposal again succeeded in the Commons, and was again defeated in the Lords, but with so little discussion, that no observations respecting it have been, through the usual channels, communicated to the public.

No. XXVI. a. 49 Geo. III. c. 6.

Money pursuant to Orders of Courts of Equity.—[13th *March* 1809.]

32 Geo. 2. c. 28. 33 Geo. 3. c. 5. 37 Geo. 3. c. 85.

WHEREAS it is just and highly expedient that the benefit of an Act, passed in the thirty-second year of the reign of his late Majesty King *George* the Second, intituled, *An Act for Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon oath, their Estates for their Creditors Benefit;* and of an Act, passed in the thirty-third year of the reign of his present Majesty, intituled, *An Act for the further Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates for their Creditors Benefit;* and of an Act, passed in the thirty-seventh year of the reign of his present Majesty, intituled, *An Act to amend so much of an Act, made in the thirty-second year of the reign of King* George *the Second, intituled, 'An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for sums not exceeding what are mentioned in the Act, to make Discovery of, and deliver upon Oath, their Estates for their Creditors Benefit, as relates to the Weekly Sums thereby directed to be paid to Prisoners in Execution for Debt, in the Cases therein mentioned;'* should be extended to prisoners in custody for contempt of court, by not paying money ordered to be paid by decrees or orders of courts of equity; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, all persons who are or shall be in custody for contempt of any court of equity, by not paying any sum or sums of money or costs, ordered to be paid by any decree or order of any such court, shall be entitled to the benefit of the said several Acts of Parliament, and shall be subject to all the same terms and conditions as are therein expressed and declared with respect to prisoners for debt only, and that it shall be lawful for persons now in custody for such contempt to make application for relief under the said Acts of Parliament, at any time before the end of *Michaelmas* term next.

Persons in custody for contempt of courts of equity for non-payment of money or costs, shall be entitled to the benefit of the recited Acts.

[No. XXVII.] 52 George III. c. 32.—An Act for the Relief of Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferable at the Bank of *England*.—[20th *April* 1812.]

[Inserted Part III. Class XI. No. 2.]

[No. XXVIII.] 52 George III. c. 158.—An Act to extend the Provisions of an Act passed in the thirty-sixth Year of the Reign of His present Majesty, for the Relief of Persons equitably entitled to Stocks and Annuities transferable at the Bank of *England*, and of an Act passed in this present Session for the Relief of Infant Suitors entitled to the like Stocks and Annuities, to all other transferable Stocks and Funds.—[29th *July* 1812.]

[Inserted Part III. Class XI. No. 3.]

No. XXIX. 53 Geo. III. c. 24.

[No. XXIX.] 53 George III. c. 24.—An Act to facilitate the Administration of Justice.*—[23d *March*, 1813.]

'WHEREAS the number of appeals and writs of error in Parliament has of late years greatly increased, and it has become necessary that a larger proportion of time should be allotted for hearing and determining such appeals and writs of error than has usually been employed for that purpose; and therefore as well as for the better administration of justice in the several judicial functions belonging to the offices of the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal of the United Kingdom, it is expedient that another judge should be appointed to assist in the discharge of such judicial functions;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for his Majesty, his heirs and successors, to nominate and appoint from time to time, by letters patent under the great seal of the United Kingdom, a fit person, being a barrister at law of fifteen years' standing at the least, to be an additional judge assistant to the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal of the United Kingdom for the time being, in the discharge of the judicial functions of their respective offices, and to be called Vice-Chancellor of England; to hold such office during his good behaviour.

His Majesty empowered to appoint an additional judge-assistant to the Lord Chancellor, to be called Vice-Chancellor of England.

II. And be it further enacted by the authority aforesaid, That such Vice-Chancellor shall have full power to hear and determine all causes, matters and things, which shall be at any time depending in the Court of Chancery of *England*, either as a court of law or as a court of equity, or incident to any ministerial office of the said court, or which have been or shall be submitted to the jurisdiction of the said court, or of the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal, for the time being, by the special authority of any Act of Parliament, as the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal, shall from time to time direct; and all decrees, orders and acts of such Vice-Chancellor, so made or done, shall be deemed and taken to be respectively, as the nature of the case shall require, decrees, orders and acts of the said Court of Chancery or of such incident jurisdiction as aforesaid, or under such special authority as aforesaid, and shall have force and validity, and be executed accordingly; subject nevertheless in every case to be reversed, discharged or altered by the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal for the time being; and no such decree or order shall be enrolled until the same shall be signed by the Lord Chancellor, Lord Keeper, or Lords Commissioners of the great seal for the time being: Provided always, that such Vice-Chancellor shall have no power or authority to discharge, reverse or alter any decree, order, act, matter or thing made or done by any Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal, unless authorized by the Lord Chancellor, Lord Keeper, or Lords Commissioners for the time being so to do; nor any power or authority to discharge, reverse or alter any decree, order, act, matter or thing made or done by the Master of the Rolls.

To hear and determine causes in Chancery of England, either in law or equity.

Decrees valid, &c.

III. And be it further enacted by the authority aforesaid, That such Vice-Chancellor shall sit for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal, whenever they shall respectively require him so to do; and shall also at such other times as the Lord Chancellor, Lord Keeper, or Lords Commissioners of

Vice-Chancellor to sit in absence of Lord Chancellor, &c. or in a separate court at same time as Lord Chancellor is sitting.

* See some observations on this subject in the Appendix, No. 2.

No. XXIX. 53 Geo. III. c. 24.

the great seal shall direct, sit in a separate court, whether the Lord Chancellor, Lord Keeper, or Lords Commissioners of the great seal, or the Master of the Rolls shall be sitting or not; for which purpose the said Lord Chancellor, Lord Keeper, or Lords Commissioners of the great seal respectively, shall make such orders as to them respectively shall appear to be proper and convenient from time to time as occasion shall require.

Rank and precedence.

IV. And be it further enacted by the authority aforesaid, That such Vice-Chancellor shall have rank and precedence next to the Master of the Rolls.

Secretary, trainbearer, and usher.

V. And be it further enacted by the authority aforesaid, That it shall be lawful for his Majesty, his heirs and successors, in and by such letters patent as aforesaid, or any other letters patent under the great seal of the United Kingdom, to direct that such Vice-Chancellor shall have a secretary, train-bearer and usher; and that the secretaries and deputy registers, and other officers appointed to attend the Lord Chancellor, Lord Keeper, or Lords Commissioners of the great seal, shall attend such Vice-Chancellor when sitting for the Lord Chancellor, Lord Keeper, or Lords Commissioners respectively, and also when sitting in his separate court, as circumstances shall require, and as the said Lord Chancellor, Lord Keeper, or Lords Commissioners respectively shall order and direct.

May be removed.

VI. Provided always, and be it further enacted, That it shall be lawful for his Majesty, his heirs and successors, to remove any such Vice-Chancellor from his office, upon an address of both Houses of Parliament.

Oath.

VII. And be it further enacted by the authority aforesaid, That the said Vice-Chancellor, previous to his executing any of the duties of his office, shall take the following oath, which the Lord Chancellor, Lord Keeper, or Lords Commissioners of the great seal, or the Master of the Rolls for the time being, are hereby respectively authorized and required to administer; *videlicet*,

'I do solemnly and sincerely promise and swear That I will duly and faithfully, and to the best of my skill and power, execute the office of Vice-Chancellor of *England*. So help me God.'

[VIII. Money of suitors in Chancery not exceeding 60,000*l.* lying unemployed at the Bank, placed out on Government, &c. security; and from interest, salaries of Vice-Chancellor, &c. to be paid quarterly.]

[IX. Changing securities.]

[X. Money placed out, called in for answering the demands of suitors.]

[XI. Costs, &c. paid from interest and dividends.]

[XII. Additional sum of 2500*l.* set apart and paid quarterly out of fees of Lord Chancellor, &c. and carried to account of aggregate fund.]

Fees not to be received.

XIII. And be it further enacted, That the said Vice-Chancellor and his officers respectively shall not take or receive, or demand any fee or reward whatsoever, over and above the salaries hereinbefore directed to be paid to them respectively, for or in respect of any business which shall be done by such Vice-Chancellor or his officers, by virtue of the powers and authorities given by this Act; but that all fees for such business shall be taken and received by the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal for the time being, or his or their proper officers, in such and the same manner as if such business had been done by such Lord Chancellor, Lord Keeper, or Lords Commissioners respectively.

[No. XXX.] 54 George III. c. 14.—An Act to provide that Property vested in the Accountant-General

of the High Court of Chancery, as such, shall, upon his Death, Removal, or Resignation, vest from time to time in those who shall succeed to the Office.—[6th *December*, 1813.]

Onresignation, &c. of Accountant-General, property to vest in successor.

'WHEREAS it is expedient to provide by law as is hereinafter enacted;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, That in all cases in which, by virtue of this Act or of any Act of Parliament, conveyance, assignment, transfer, obligation or security, any interest in real or personal estate, effects or property, hath been or shall be vested in, conveyed, assigned, transferred, made payable to, or secured to the Accountant-General of the High Court of Chancery as such Accountant-General, and in respect of his office as such, the same, upon the death, removal or resignation of each Accountant-General from time to time, and as often as the case shall happen, and the appointment of a successor, shall vest, subject to the same trusts as the same were before respectively subject to, in the succeeding Accountant-General by force of this Act, and without any act whatever to be done by the Accountant-General resigning or removed, or by the heirs, executors or administrators of any Accountant-General resigning, removed or dying, or any person or persons claiming under him, them or any of them, and notwithstanding any such interest may have been expressed to have been vested in, conveyed, assigned, transferred, made payable to, or secured to the Accountant-General, his heirs, executors, administrators and assigns, or any of them, and shall and may be proceeded upon in the name of such succeeding Accountant-General by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of the heirs, executors or administrators of such former Accountant-General.

Property heretofore vested in any former Accountant-General vested in present Accountant-General.

II. And be it further enacted by the authority aforesaid, That in all cases in which by virtue of any Act of Parliament, conveyance, assignment, transfer, obligation or security, any interests in any real or personal estate, effects or property have been heretofore vested in any former Accountant-General as Accountant-General, and in respect of his office as such, and which may now remain vested in his heirs, executors or administrators, notwithstanding the same was vested in him as Accountant-General in respect of such his office, all such interests shall, by force of this Act, from and after the passing thereof, be and the same are hereby vested in the present Accountant-General as Accountant-General, and shall and may be proceeded upon in the name of the present Accountant-General, or the Accountant-General hereafter for the time being in any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of the heirs, executors or administrators of such former Accountant-General.

Acts done by Accountant-General under any order of court valid.

III. And be it further enacted by the authority aforesaid, That all acts done or to be done by the present or any future Accountant-General, under any order or orders, decree or decrees of the Court of Chancery, touching any real or personal estate, property or effects, the interest wherein respectively is by this Act vested or intended to be vested in the present Accountant-General, and in succeeding Accountants-General, shall by force of this Act be deemed and taken to be valid and effectual; and also, that all acts heretofore done by any Accountant-General for the time being, in obedience to any such order or orders, decree or decrees, touching any real or personal estate, effects or property, the interest wherein respectively might have remained at the time such acts were done in any former Accountant-General who had resigned or had been removed, or in the heirs, executors or administrators of any then deceased Accountant-General, shall by force of this Act be deemed and taken to be valid and effectual.

No. XXXI. 57 Geo. III. c. 39.

[No. XXXI.] 57 George III. c. 39. An Act to extend certain Provisions of the Acts of the thirty-sixth and fifty-second Years of the Reign of his present Majesty to Matters of Charity and Friendly Societies.—[20th *June*, 1817.]

WHEREAS it is expedient to extend the relief, remedies, provisions, protections and indemnities made, given, and provided by the 36 George 3. c. 90. *Act for the Relief of Persons equitably and beneficially entitled to or interested in the several stocks and annuities transferable at the Bank of* England; and by the Act intituled *An Act to extend the provisions of* 52 George 3. c. 158. *an Act passed in the thirty-sixth year of the reign of his present Majesty, for the Relief of Persons equitably entitled to Stocks and Annuities transferable at the Bank of* England; and of *an Act passed in this present session, for the Relief of Infant Sailors entitled to the like Stocks and Annuities, to all other transferable Stocks and Funds* to certain cases herein specified, and not provided for by the said two Acts, or by either of them: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the said Acts of Parliament, and all the relief and remedies, provisions, protections and indemnities thereby provided, shall extend and be deemed and taken to extend, and the same are hereby declared and enacted to extend to all cases of petitions on which the Court of Chancery, or the Lord High Chancellor, or commissioners of the great seal for the time being, or the Master of the Rolls, or the Vice-Chancellor of *England* for the time being, or the Court of Exchequer, are by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment or transfer of any of the funds thereof; or in matters relative to any benefit or friendly societies, or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof.

Extending certain provisions of recited Acts to charity and friendly societies.

[No. XXXII.] 4 George IV. c. 61.—An Act for the better Administration of Justice in the Court of Chancery in *Ireland*.—[10th *July* 1823.]

No. XXXII. 4 Geo. IV. c. 61.

WHEREAS it hath appeared, by reports made to the King's most excellent Majesty from the Commissioners appointed by His Majesty, upon an address of the knights citizens and burgesses in Parliament assembled, to inquire into the duties and emoluments of the officers clerks and ministers of justice in all temporal and ecclesiastical courts in *Ireland*, that the several ministerial offices of His Majesty's High Court of Chancery in *Ireland* require regulations for ensuring the more easy cheap and expeditious administration of justice in the said court: And whereas some of such regulations may be carried into effect by general orders of the said court, but certain other regulations are required, which cannot be carried into effect without the aid of Parliament: And whereas it is expedient that the fees to be taken by the Lord High Chancellor of *Ireland*, or the Lord Keeper or the Commissioners for the custody of the Great Seal, and by the several officers of the said court, should be ascertained and regulated by law: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the commencement of this Act it shall and may be lawful for the Lord High Chancellor, or the Lord Keeper of the Great Seal of *Ireland*, or the Commissioners for the custody of the Great Seal of *Ireland* for the time being, and for the deputy keeper of the rolls, registrars, six clerks, examiners, clerk of the hanaper, clerk of the crown, cursitor, and other officers, and their several and respective deputies and clerks, in of or belonging to the said Court of Chancery, mentioned and described in the several tables to this Act annexed, to ask, demand, have, receive, take, and accept, for and by reason and on account of the several acts matters and things to be done in or concerning the business of the several and respective offices, or of the several services to be performed touching or concerning such offices, the several fees, payments, and sum and sums of money in the said tables hereunto annexed respectively mentioned, and none other or greater fees or sums of money whatever; and that no officer or attendant of the said court, nor any deputy or clerk of any such officer, nor any person acting in any of the offices of the said court, or doing any part of the business thereof, shall ask, demand, or receive from any of the suitors of the said court, or from any person or persons whomsoever on their behalf, any fee or sum or sums of money whatever, on account of, or for the performance of, or under pretence of performing any act matter or thing whatsoever, in anywise relating to the business of the said court, not mentioned in the said tables, or some or one of them, as payable for or in respect of such act matter or business, except under the provisions of this Act, any law usage or custom at any time heretofore made used or exercised to the contrary in anywise notwithstanding; and that the said tables, and all directions matters and things contained therein, shall be taken as part of this Act to all intents and purposes whatsoever.

Fees of Lord Chancellor and all other Officers of the Court of Chancery ascertained according to Tables annexed to this Act.

II. Provided always and be it enacted, That it shall and may be lawful for the Lord Chancellor in *Ireland*, or Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland* for the time being, from time to time to vary and alter the amount of any of the fees aforesaid, by decreasing or increasing the same, or to abolish any of the said fees altogether; and also to direct and authorize the payment of any new or additional fee to the several officers and persons in the said tables mentioned, or any of them, or to any other persons for or in respect of any matters or things mentioned in the said tables or any of them, or of any other matters or things to be done in the execution of the duty of the office of such officers or persons respectively;

Fees may be altered, or new Fees allowed, by Order of Lord Chancellor.

No. XXXII. 4 Geo. IV. c. 61.

and all such fees the amount whereof shall be so altered, and all such new or additional fees which shall be so made payable, and also any order for the abolition of any fee shall be specified and set forth in a table or tables to be made by order of the said Court of Chancery, and signed by the Lord Chancellor or Lord Keeper or Commissioners as aforesaid; and such order shall specify the grounds and reasons upon which such fees shall have been altered abolished or made payable respectively; and a copy of every such order, signed as aforesaid, shall be transmitted by the Lord Chancellor or Lord Keeper or Commissioners as aforesaid, to the Lord Lieutenant or other chief governor or governors of *Ireland*, who shall cause copies of the same to be laid before both Houses of Parliament immediately after the commencement of the then next session of Parliament, and thereupon every such fee shall be and be deemed and taken to be a legal fee according to the terms of such order, and payable and receivable as such, from and after the last day of such session of Parliament, as if the same had been included in any of the tables annexed to this Act.

Such Orders shall be transmitted to the Lord Lieutenant, who shall cause Copies thereof to be laid before Parliament.

III. Provided also, and be it enacted, That it shall and may be lawful for the Lord Chancellor of *Ireland*, or the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland* for the time being, to make any such order or orders of the said Court of Chancery, for the altering or discharging any course of proceedings in suits pending or to be brought in the said court, and to direct that such process shall issue, and in such manner and course in all such suits as to the said Lord Chancellor, Lord Keeper or Commissioners respectively, shall seem fitting and expedient, in the same manner, and with the same force and effect in all respects as if this Act had not passed; and that no clause matter or thing contained in any Act or Acts from time to time in force in *Ireland*, for the granting or regulating the payment of any stamp duty, or any process in any suit in the said court, shall extend or be construed to extend to prevent alter or affect the course of any such proceedings, or the issuing of any such process, or to warrant or authorize the receipt of any greater fee by the alteration of the number of words in any sheet of proceeding; and that the several stamp duties from time to time imposed or payable on any such proceeding or process shall be paid and payable upon the same as altered by the said court, or upon such proceeding or process as shall be substituted for any which may be abolished, such process or proceeding being by such order declared to be so substituted.

Lord Chancellor may alter Course of Proceedings in Suits in Chancery, and Stamp Duties shall be applied to Process so altered.

IV. Provided also, and be it enacted, That nothing contained in this Act, nor in the table (No. 10.) thereto annexed, shall extend or be construed to extend to prevent the clerk of the crown and clerk of the hanaper, and his deputy, during the tenure of the present possessor of the said office, from demanding or receiving the several fees which have been accustomed to be paid for and by reason and on account of all such acts matters and things done in and concerning the business of the said office, until the appointment of the successor of the present possessor of the said office: Provided nevertheless, that nothing in this Act shall extend or be taken to extend to authorize the said clerk of the crown and hanaper, or his deputy, to demand or accept any fee contrary to the provisions of any Act of Parliament, or otherwise contrary to law.

Proviso for existing Clerk of the Crown and Hanaper to receive their usual Fees.

V. And be it further enacted, That if any deputy or clerk, or other person whatever, employed in the several offices or places mentioned and specified in any of the tables to this Act annexed (other than the said deputy clerk of the crown and hanaper, as to such acts matters and things relating to which the said clerk of the crown and hanaper is by this Act to receive the lawful fees heretofore accustomed, during the tenure of the present possessor of the office of clerk of the crown and hanaper), shall, at any time after the commencement of this Act, ask or demand, or shall have, take, accept, or receive from any suitor solicitor or other person whomsoever, save and except only from the principal officer by and under whom any such deputy or clerk, or other person, shall be immediately employed, any gift, fee, reward, or remuneration, for or by reason

Penalty on any Deputies or Clerks taking any Fees contrary to this Act, 100*l.*

or on account or under pretext of any service of their own, or of any person or persons employed by or under them respectively, in any of the offices of the said Court of Chancery; or if any such deputy or clerk, or other person, shall ask or demand, or shall have, take, receive, or accept any gift, fee, or reward, gratuity or remuneration, for or by reason or on account or under pretext of the services of their principals or employers, or for or by reason or on account or under pretext of any matter or thing whatever, done in and about the business of their respective offices, other than and except only such fees and sums of money as shall from time to time be lawful under the provisions of this Act; every deputy clerk or other person so offending, shall, for every such offence, forfeit and lose the sum of one hundred pounds.

Penalty on Principals in Offices taking Fees contrary to this Act, 100*l.*, Loss of Office, and Incapacity.

VI. And be it further enacted That if any person who shall hold any of the said offices mentioned and described in any of the tables to this Act annexed, shall, by himself or by his deputy, or by any clerk or person authorized on his behalf, wilfully and knowingly ask, demand, have, take, receive, or accept, directly or indirectly, any gift, fee, reward, gratuity, or remuneration, for or by reason or on account or under pretext of any service in any of the offices in the said tables specified, other than and except only such fees and sums of money as shall from time to time be lawful under the provisions of this Act, or shall wilfully and knowingly ask, demand, have, take, or receive or accept, directly or indirectly, any gift, fee, reward, gratuity, or remuneration, for or by reason or on account or under pretext of any service, in any way concerning or relating to the business of any of the said respective offices not then allowed to be taken under the provisions of this Act, every such person so offending shall for every such offence forfeit and lose the sum of one hundred pounds, and shall also forfeit and lose all and every office and offices in or under the said Court of Chancery, which such person shall hold or be possessed of at the time of such offence, and shall for ever after be incapable and incapacitated from holding any office in or under the said court.

Oath of Office by Officers of the Court of Chancery.

VI. And be it further enacted, That from and after the third day of the *Michaelmas* term next after the passing of this Act, no person whatsoever shall in anywise act in the business of any of the offices or places under the said Court of Chancery mentioned in the tables to this Act annexed, or any of them, or shall do any act relating to the business of any such office, whether as a principal or deputy, or a clerk, until such person shall have taken and subscribed before the Lord Chancellor, or Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, an Oath, in the form following, that is to say,

Oath.

'I *A. B.* do solemnly swear, That I will, to the best of my knowledge skill and judgment execute and perform such of the duties of the office [*here state the description of the office*] in the Court of Chancery in *Ireland*, as I shall personally execute; and that I will well and faithfully pay every deputy or clerk whom I shall or may at any time employ in any part of the business of the said office, such salaries and allowances as they shall from time to time be respectively entitled to by law, or such additional sum as I shall contract or agree to pay to them respectively; and that I will not, by myself, or by any deputy or clerk, or other person or persons, ask or demand, or have, take, accept, or receive any gift, fee, reward, gratuity, or remuneration whatever, other than such as shall at the time of receiving the same be authorized and allowed by the tables which shall be then in force, or under the provisions of some Act of Parliament; and that I will in all things relating to my said office conduct myself according to the rules and regulations which shall from time to time be in force for the regulation of such office, and of the business thereof. So help me God.'

Penalty on acting without having taken the Oath 20*l.* per Day.

And any officer, deputy, clerk, or other person who shall, at any time after the third day of the said *Michaelmas* term, personally act in any matters relating to the business of any such office in the said court, without having taken and subscribed such oath as aforesaid, shall for every day on which he shall so act forfeit the sum of twenty pounds.

No. XXXII. 4 Geo. IV. c. 61.

Officers shall affix Tables of Fees in their Offices; Penalty 20*l.* per Day.

VIII. And be it further enacted, That every officer of the said Court of Chancery shall, on or before the third day of the *Michaelmas* term next after the passing of this Act, and every officer of the said court who shall hereafter be appointed within three calendar months after he shall have taken the oath of office required by this Act, affix or cause to be affixed or hung up in his office a table of all such fees as it shall be then lawful to receive, pursuant to the directions of this Act, in his said office, in respect of the business thereof; and if at any time any of such fees shall be altered or abolished, or any new fee or fees authorized according to the directions of this Act, in respect of the business of such office, then and in every such case such officer shall, within one week from the time of such change, alter such table so kept in his office pursuant and according to such change, and to the order for making the same; and such table shall at all times be written or printed in fair and legible characters, and shall be framed and glazed, so as to be preserved from being erased or altered in any other manner save as aforesaid, and shall be always kept affixed or hung up in such manner that the same shall be accessible to and legible by all persons resorting to such office; and in case such table shall not be so affixed or hung up, and continually kept so framed and glazed and legible in the said office, such officer shall, for every day on which such table shall not be so kept and legible as aforesaid in such office, forfeit the sum of twenty pounds.

Every Officer shall, in Michaelmas Term 1828 and 1833, and so regularly in each Five Years, deliver to the Registrar, on Oath, a Table of Fees taken in his Office during the preceding Five Years.

IX. And be it further enacted, That every officer of the said Court of Chancery shall once in every five years, that is to say, in *Michaelmas* term one thousand eight hundred and twenty-eight, and in the like manner on some day in *Michaelmas* term one thousand eight hundred and thirty-three, and so in *Michaelmas* term in every fifth year succeeding, deliver to the registrar of the said court in open court, a table or schedule, under the hand and seal of such officer respectively, specifying and setting forth the rate of all fees charged or received in the office of such officer, at any time during five years then next immediately preceding, and paid to or received by such officer, or any his deputy or clerk, or other person whatsoever, directly or indirectly, for the benefit of such officer, or his deputy or clerks respectively; and every such officer shall, at the time of the delivery of such table, take oath to the truth thereof in open court, to the best of his knowledge and belief, which oath shall be written at the foot of such table, and shall be signed by such officer.

Registrar shall check such Tables by the Tables to this Act and subsequent Orders, and if correct, shall file them, and transmit Copies to the Privy Council.

X. And be it further enacted, That the registrar of the said court shall, upon the receipt of such tables, carefully examine the same, and the several fees therein stated and set forth, and shall compare the same with the several fees contained in the tables to this Act annexed, and with such orders of the said court as may have altered the said fees or any of them, or may have added any new or other fees; and in case it shall appear to such registrar upon examination that any fee or fees contained in the said table shall exceed in amount the fee allowed to be taken according to the tables to this Act annexed, or any orders of the said court for altering the same, or shall not be included in or allowed by such tables or orders respectively, the said registrar shall lay the said tables before the Lord Chancellor, or Lord Keeper, or Commissioners for the custody of the Great Seal, for his or their directions; and the said registrar shall file all such tables of fees to which, on examination, no objection shall appear, or which shall be approved of by the Lord Chancellor, or Lord Keeper, or Commissioners for the custody of the Great Seal, and shall transmit a copy of every such table of fees so filed, signed by such registrar, to the clerk of His Majesty's Privy Council in *Ireland*, on or before the thirty-first day of *December* next ensuing every such *Michaelmas* Term in which the same shall have been delivered as aforesaid.

Registrar shall transmit to Privy Council Lists of Officers returning or omitting to return Table of Fees; Penalty on such Officers and Registrar for neglect 200*l.*

XI. And be it further enacted, That the said registrar of the said Court of Chancery shall, on or before the thirty-first day of *December* next after every such *Michaelmas* term in each fifth year, transmit to the clerk of His Majesty's Privy Council in *Ireland* a list of all officers of the said court who shall have neglected or omitted to deliver the tables

required by this Act, for the five years preceding such *Michaelmas* term; and if any officer shall omit or neglect to deliver such table as is required by this Act, or if any registrar shall neglect or omit to transmit to the Privy Council copies of the tables so delivered as aforesaid by the officers of the said court or any of them, or shall neglect or omit to transmit a list of such officers so neglecting to deliver in such tables, every such officer and registrar so making default shall forfeit the sum of two hundred pounds.

Present Examiners in Chief and Masters' Clerks, and Examiners and all other Officers and Clerks hereafter to be appointed, disabled from practising as Solicitors or Attornies.

XII. And be it further enacted, That from and after the first day of *Michaelmas* term one thousand eight hundred and twenty-three, it shall not be lawful for any person who now holds any office of examiner in chief of the said court, or of master's clerk or examiner in the said court, to act or practise, either in his own name or in the name of any other person or persons, as a solicitor in the said Court of Chancery, or to be in partnership with any solicitor in the said Court of Chancery in *Ireland;* and that from and after the said first day of *Michaelmas* term it shall not be lawful for any person who shall be hereafter appointed to hold any of the offices of the said court mentioned and specified in any of the tables to this Act annexed, or who shall hereafter be appointed a deputy or clerk to any person who now holds or shall hereafter hold any office, to act or practise, either in his own name or in the name of any other person or persons, as an attorney or solicitor in any of the courts of law or equity in *Ireland;* and every such officer or person who shall directly or indirectly, by himself or any other person in partnership with or in trust for him, act as such attorney or solicitor, contrary to the true intent and meaning of this Act, shall, for every time he shall so act, forfeit the sum of two hundred pounds.

Penalty 200*l.*

Officers shall keep Writing Clerks in their Offices, and pay them 1½*d.* per Office Sheet.

XIII. And be it further enacted, That all officers of the said Court of Chancery, who shall be entitled to any fees under the provisions of this Act, shall employ in their respective offices a sufficient number of writing clerks, to make copies of bills, pleadings, affidavits, orders, decrees, and other things belonging to their respective offices, and required by or on behalf of the suitors of the said court, and to do and perform all other business requisite to be done and performed in such respective offices, so that the business of any suitor of the said court shall not be unnecessarily delayed therein; and such officer shall pay to every such writing clerk, for all copies made by such writing clerk, after the rate of not less than one penny halfpenny for every office sheet, consisting of seventy-two words, of every such copy made by such clerk, and for a part or portion of any office sheet; and it shall not be lawful for any such officer to cause or direct or knowingly permit any such copy, or any part thereof, to be made in any other place, or by any other person, than in the proper office of such officer, and by a writing clerk employed in such office, and paid exclusively by such officer after the rate aforesaid at the least; and every such officer shall be responsible for the accuracy of every copy so made in his office, and for the same being duly compared with the original from which it shall be made; and every such officer who shall cause or direct or knowingly permit any copy to be made contrary to this Act, or who shall not pay the writing clerk for writing the same according to the rate by this Act directed at the least, shall for every such offence forfeit the sum of twenty pounds.

Officer shall not permit Copies to be made elsewhere than in his Office by such Copying Clerks.

Penalty 20*l.*

In case of want of Room Lord Chancellor may make annual Order for permitting Copies to be made out of the Offices.

XIV. Provided always, and be it enacted, That if at any time or times it shall be ascertained by affidavit or otherwise, to the satisfaction of the Lord Chancellor of *Ireland*, or the Lord Keeper or the Commissioners for the custody of the Great Seal of *Ireland*, that any officer of the said court hath not in his office sufficient room for the reasonable accommodation of himself, his deputies and assistants, and of a sufficient number of clerks to do and perform the business so required to be done in such office as aforesaid, then and in every such case it shall and may be lawful to and for such Lord Chancellor Lord Keeper or Commissioners, to make an order declaring that the same has been so proved, and that it shall be lawful for such officer to cause direct or permit any such copy, or any part thereof, to be made in any place and by any person whatever;

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and that for every copy or part of a copy which shall be so made in any other place than the said office, such officer, in ascertaining and charging his fees in respect thereof, shall allow out of the fees usually payable on such copies or parts of copies one penny halfpenny for every office sheet thereof; and every such order shall be good and valid, and shall be a sufficient justification in all respects to any person acting in pursuance thereof, for one year from the date thereof, unless sooner rescinded, and shall and may be renewed from time to time, until by reason of new buildings or new arrangements or otherwise, sufficient room shall have been obtained for the purposes in that behalf aforesaid; and the residue only of the fees to which such officer would then be lawfully entitled, in case such copying had been regularly done in his office, which shall remain after such deduction as aforesaid, shall be deemed and taken to be the lawful fees or fee of such officer in such case.

Solicitors may prepare Copies of Decrees, Affidavits, &c. and mark Fees thereon.

XV. Provided also, and be it enacted, That it shall and may be lawful for any solicitor of the said Court of Chancery to prepare for the attestation of the proper officers of the said court, copies of all or any such decrees, reports, accounts, affidavits, and other matters or things, as such solicitor shall have occasion to file; and that every such officer shall compare and attest such copy, and shall in such case deduct and allow out of the fee payable to such officer for such attested copy the sum of one penny halfpenny for every office sheet thereof; and shall mark the fees on such documents pursuant to this Act, as if such copy had been prepared by such officer; and further, that it shall and may be lawful for any solicitor of the said Court of Chancery to prepare drafts of decrees, and all other documents, in like manner as the solicitors of said court have heretofore been accustomed to do.

In all Copies, &c. concluding Fraction of a Sheet, &c. may be charged as a whole Sheet &c.

XVI. And be it further enacted, That in all copies, engrossments, exemplifications or extracts of any rules, pleadings, decrees or other matters chargeable according to the length thereof, whether the charge for the same shall be computed according to the sheet, the skin, the roll, or the side, a fraction of a sheet, skin, roll, or side respectively, of any such copy, engrossment, exemplification, or extract, may be charged for by any officer as an entire sheet, skin, roll or side, provided that on each such copy, engrossment, exemplification or extract respectively, there shall be charged only one such fraction of a sheet, skin, roll or side respectively.

In all Copies, Sums, Dates, and Numbers shall be expressed in Figures, and charged as such.

XVII. And be it further enacted, That in all copies of schedules and accounts whatsoever issued from any office in the said Court of Chancery, the charge or fee whereupon is or are or shall or may be lawfully computed according to the contents, all sums of money and dates of the year, and days of the month, and numbers, shall be expressed in figures, and shall be charged as if the same were expressed in figures, and not in words, in manner and according to the directions following; (that is to say), one pound, or any number of pounds, shall be charged as one word; one shilling, or any number of shillings, shall be charged as one word; one or more penny or pence, whether with or without any fraction of a penny, shall be charged as one word; any fraction of a penny not joined with any penny or pence shall be charged as one word, whether the same shall occur singly or shall be combined in any mode or form whatsoever; and any definite number whatever shall be charged as one word and no more.

Charge of Fees shall be endorsed on all Copies and Documents.

Charge of Documents not so endorsed shall not be allowed on Taxation of Costs.

XVIII. And be it further enacted, That upon the back of all copies, engrossments, exemplifications, and writings, which shall be issued from any office of the said Court of Chancery, or by any officer of the said court, there shall be endorsed and written by the said officer, or his sufficient deputy or clerk, the full amount of all office fees charged on such copy, engrossment, exemplification, or writing respectively, and the rate of such fees, and the mode of charge according to which such fees shall be computed, and the number of sheets skins or sides on which such fees shall be charged or calculated; and upon any taxation of costs between party and party, or between attorney and client, such copy, engrossment, exemplification, or writing, shall be produced before the

taxing officer, in all cases where it shall appear to him practicable; and it shall not be lawful for the taxing officer to allow any charge of any solicitor or attorney, with respect to any such document so produced, upon which the amount and rate of fees shall not be so endorsed, but that all and every such charge shall be struck out of the bills of such solicitor or attorney by such taxing officer.

Taxing Officers shall examine into Justice of Charges on Bills of Costs.

XIX. And for the removal of doubts as to the extent of the duty of the taxing officers of the said Court of Chancery, be it further enacted, That upon all taxations of bills of costs, whether between party and party, or between attorney and client, it shall be the bounden duty of the taxing officer, whether he shall be required so to do or not, and whether any objection shall have been made or not, to examine and ascertain, by all reasonable methods, that each and every charge in any bill of costs contained (whether such shall be a fee for counsel solicitor or officer of court, or stamp duty, or any other disbursement whatsoever, or any charge for business done by the person charging the same) is the proper charge which, under the circumstances of the case, ought to be made; and that upon all such taxation the taxing officer shall determine upon all charges made by any officer of the Court of Chancery, and to allow only such as shall appear to him made according to the true right of such officer respectively.

Deputy Keeper of the Rolls, &c. shall receive all Fees at the Rolls Office, and pay thereout certain Salaries, &c. specified to himself, to the Clerk of Enrolments, Comparing Clerks, &c. and shall deliver Accounts thereof Quarterly to Commissioners for auditing the Public Accounts, and pay over Surplus to the Consolidated Fund.

XX. And be it further enacted, That from and after the commencement of this Act, the deputy keeper of the rolls, or the clerk of the enrolments, or any clerk or other person employed in the Rolls Office, to demand or accept, for or on account of any act matter or thing done in or concerned in the business of the Rolls Office, as the same are set forth in the table (No. 2.) to this Act annexed, or as may be payable under any order or orders of court made in pursuance of the provisions in this Act contained, save and except only in such cases where, under the provisions of any Act of Parliament now in force in *Ireland*, any lesser fees are appointed to be taken; and that the said deputy keeper of the rolls shall quarterly and every quarter, on the twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, or within ten days next after, retain and pay, out of the produce of such fees, the several sums charges and disbursements following, to and for the use of him the said deputy keeper of the rolls, and the several officers following; that is to say, to and for the use of him the said deputy keeper of the rolls, the sum of two hundred and fifty pounds, being one thousand pounds yearly; to and for the use of the clerk of the enrolments, the sum of one hundred pounds, being four hundred pounds yearly; to and for the use of the clerk for regulating the pleadings after they are copied and compared, and for removing the pleadings once a year from the inner office into the record room, the sum of seven pounds two shillings and two-pence farthing, being twenty-eight pounds eight shillings and nine-pence yearly; and to and for the use of the train-bearer of the Master of the Rolls, the sum of thirty-seven pounds ten shillings, being one hundred and fifty pounds yearly; to and for the crier of the Rolls Court, the sum of twelve pounds ten shillings, being fifty pounds yearly; to and for the housekeeper, the sum of six pounds five shillings, being twenty-five pounds yearly; to and for the use of the Rolls Court keeper, the sum of two pounds five shillings and sixpence, being nine pounds two shillings yearly; and to and for the use of the conducting clerks, copying clerks, and comparing clerks, and the clerks for engrossing enrolments in the said Rolls Office, such sum or sums as shall be equal to the rates and amounts following; that is to say, to the conducting clerks one shilling for every twenty sheets, to the copying clerks one penny halfpenny for every sheet, and to the comparing clerks threepence for every twenty sheets, of every copy of every bill, answer, plea, replication, rejoinder, demurrer, enrolment, or other pleading, document, or matter whatsoever, which shall be made in the said office; and to the engrossing clerks one shilling for engrossing every double strip of enrolment of every patent deed or other document or matter which shall be enrolled in the said office during the quarter ending on such twenty-fifth

No. XXXII. 4 Geo. IV. c. 61.

day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, in every year; and that the said deputy keeper of the rolls do retain and pay out of the said fees, for parchment, stationery, coals, candles, the court yard keeper, and for such other incidental expences as have been heretofore accustomed to be paid out of the fees of the Master of the Rolls, for the use of the said Rolls Office and the Rolls Court, such sums respectively as shall appear necessary to the Commissioners for auditing of public accounts in *Ireland* to be continued to be paid; and such deputy keeper of the rolls, after payment of all the said respective sums charges and expences shall, within fourteen days after such twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, in each year, deliver into the office of His Majesty's said Commissioners for auditing the public accounts, for the time being, an account, signed by such deputy keeper of the rolls, of all fees received by him under this Act for the quarter ending on such twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, respectively, send an account of all fees received or receivable for the crier of the Rolls Court, and of all salaries and sums of money paid by him according to the directions of this Act, properly vouched and verified on oath, by an affidavit at the foot thereof, by such deputy keeper of the rolls, if required, before one of the Masters of the said Court of Chancery, who is hereby authorized and required to administer the oath for that purpose: and in case of the death of such deputy keeper of the rolls, then his executors or administrators shall, within six calendar months after his death, deliver in like manner to the said Commissioners for auditing the public accounts, an account, signed by such executors or administrators respectively, of all fees received, and of all salaries and sums paid by such deputy keeper of the rolls, from the latest day to which he shall have so accounted to his death; which account shall be verified in like manner by such executors or administrators, or some or one such executor or administrator; and the said Commissioners for auditing the public accounts, or the major part of them, shall and are hereby required to inquire into audit and settle, with all convenient speed, every such account so delivered, and to verify under their hands the balance due thereon; and such deputy keeper of the rolls, or his executors or administrators, having assets, shall, within six days after each such account respectively, shall be so audited and certified, pay into the receipt of His Majesty's Exchequer in *Ireland* all such sum and sums of money as shall be so certified as the balance in his or their hands; which payment shall thereupon be carried to and made part of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*.

Deputy Keeper of the Rolls shall pay 20 per Cent. Interest in case of Neglect in delivering Accounts, or Delay of paying Balance into Consolidated Fund.

XXI. And be it further enacted, That in case the said deputy keeper of the rolls, his executors or administrators, shall at any time or times neglect or make default in delivering in such account as herein-before directed, to the said Commissioners for auditing the public accounts, within the periods aforesaid respectively specified for that purpose, or in paying into the said Exchequer such balance as aforesaid for the said space of six days after such auditing, then and in every such case such deputy keeper of the rolls, or such executors or administrators, having assets sufficient to make such payment, shall pay into the said Exchequer, together with such balance, interest for the same at the rate of twenty pounds *per centum* from the expiration of the said period of six days, until paid in as aforesaid.

Acquittances for Payment into the Exchequer shall be produced to Auditors of Public Accounts.

XXII. And to the end that the payment of such balance may be ascertained, be it further enacted, That upon payment of such balance, an acquittance or discharge for the same shall be signed by the proper officer in the Exchequer, which shall be produced and exhibited by the said deputy deputy keeper to the said Commissioners for auditing the public accounts, with the next ensuing quarter's account, within one calendar month from the date thereof, or by his executors or administrators, within three calendar months from the date thereof; and the said Commissioners are hereby required to demand and have the same so produced to

them, before they shall audit and certify any subsequent account for such deputy keeper in manner herein-before directed.

XXIII. Provided always, and be it enacted, That in case it shall happen that the sums received by the said deputy keeper shall in any quarter be found insufficient to pay the different sums payable thereout as herein-before directed, it shall be lawful for the said Commissioners for auditing the public accounts, and they are hereby required and authorized and empowered to inquire into, and to audit and certify such deficiency, and thereupon such deficiency shall be charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, after paying and satisfying all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of the said Consolidated Fund, and shall be issued thereout to such deputy keeper of the rolls, to be by him applied in pursuance of the aforesaid directions in relation thereto.

On Certificate of Auditors, any Deficiency of Amount of Fees shall be charged on and paid out of the Consolidated Fund.

XXIV. And be it further enacted, That from and after the commencement of this Act, the duties of the office of deputy keeper of the rolls, and the clerk of the enrolments, shall be distributed and executed in manner following; that is to say, the deputy keeper of the rolls, in addition to the duties of superintending in general the performance of the ministerial duties in the Rolls Office, and the other duties heretofore discharged by him with respect to the attested copies of pleadings and certificates, shall, in person, or by proper persons duly employed in his office, keep the rough bill book, and insert therein the name or names of the plaintiff or plaintiffs, and defendant or defendants (as the case may be), the counsel's name, and the name of the six clerk and solicitor respectively, the time of filing the bill, and the number of skins which each bill shall contain; and shall also in like manner, within one week from the filing of each bill, enter the same in the book of pleadings; and shall also in like manner enter into the said book of pleadings all answers, pleas, demurrers, replications and rejoinders; and shall in like manner make the entries and do the duties as to amended bills and pleadings heretofore discharged by the clerk of the enrolments; and the said deputy keeper shall in like manner, from the period aforesaid, personally keep and make up the quarterly accounts of the fees received in the said office, and the payments made thereout pursuant to the provisions of this Act; and the clerk of the enrolments shall in like manner make searches and discharge the duties in relation thereunto, and attend the masters under orders to expunge, where pleadings are reported scandalous prolix or impertinent, and attend the masters and courts of justice with the records when offered in evidence, and make all enrolments, and enter and index the same; and further, shall in like manner open and keep in the office, as part of the public books thereof, to which reference may be had, a calendar or index of the decrees to be enrolled, which calendar or index shall be kept in the same manner, containing similar heads, and specifying similar particulars, as the index furnished at the Rolls Office by the Commissioners of Public Records of *Ireland*, and shall be continued from the first day of *Hilary* term one thousand eight hundred and twenty-three, mentioned in such index; and the clerk of the said enrolments shall in like manner complete the entry of all decrees enrolled in the preceding term and vacation, on or before the first sitting day of each ensuing term.

Duties of Deputy Keeper of the Rolls and Clerk of the Enrolments.

XXV. And whereas, under the provisions of the two Acts of Parliament next herein-after mentioned, the Master of the Rolls in *Ireland* for the time being is entitled to receive from His Majesty's treasury so much in or for each quarter, as, together with the fees received by him therein, shall make up the sum of one thousand and seventy-five pounds sterling: And whereas from and after the commencement of this Act no fees whatsoever will be payable to the Master of the Rolls in *Ireland*, and it is therefore expedient to abolish such mode of payment, and to make provision for maintaining the rank and importance of the said office in manner herein-after mentioned; be it therefore enacted, That all such parts of two Acts made in the Parliament of the United Kingdom, one

Expedient to provide for Master of the Rolls, to whom no Fees are payable under this Act.

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41 G. 3. c. 25. 55 G. 3. c. 114. as to Salary of the Master of the Rolls, repealed.

Act in the forty-first year of the reign of His late Majesty King *George* the Third, intituled *An Act for the better Regulation of the Office of Master of the Rolls in that Part of the United Kingdom called* Ireland, *and for augmenting the Salary annexed to the said office*; and the other Act of the fifty-fifth year of the reign of His said late Majesty, intituled *An Act to augment the Salary of the Master of the Rolls in* Ireland, *and to enable His Majesty to grant an additional Annuity to such Master of the Rolls on the Resignation of his Office*; *and to regulate the Disposal of the Offices of the Six Clerks in the Court of Chancery in* Ireland; as relate in any way to the salary of the Master of the Rolls in *Ireland*, and as relate to any account to be delivered by or on behalf of the said Master of the Rolls, of the salary fees and pecuniary profits received by or payable to him in respect of the execution of his office, shall, from and after the commencement of this Act, be and the same are hereby repealed; and that any salary heretofore charged on the civil list, for the Master of the Rolls for the time being, shall from thenceforth cease and determine.

Salary of 4,300*l.* Irish Currency a Year for Master of the Rolls charged on the Consolidated Fund from Commencement of this Act, payable Quarterly.

XXVI. And be it further enacted, That from and after the commencement of this Act, there shall be issued and paid and payable to the Master of the Rolls in *Ireland* for the time being, out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of the said Consolidated Fund, but with preference to all other payments which shall or may be hereafter charged upon or payable out of the said fund, the annual sum of four thousand three hundred pounds *Irish* currency; and the said sum of money to be issued in pursuance of this Act shall from time to time from thenceforth be payable and paid quarterly, free and clear of all taxes and deductions whatsoever, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof to be made on the first of the said quarterly days which shall immediately next follow the commencement of this Act, and in proportion only to the time which shall have then elapsed from the commencement of this Act.

Apportionment of Salary on Resignation or Death of Master of the Rolls.

XXVII. Provided always, and be it further enacted, That whenever any person holding the office of Master of the Rolls shall, during the course of any quarter, resign his said office, or shall die, then the person so resigning the said office, or the executors or administrators of such person so dying (as the case may be), shall be entitled to such proportionable part of the said salary as shall have accrued during such part of the said quarter as such person shall have executed such office as aforesaid; and every Master of the Rolls to be hereafter appointed shall, on the quarter day next after his appointment, be entitled to have and receive out of the said Consolidated Fund such proportion of the said salary as shall have arisen from the date of the letters patent of his appointment.

After the First Day of Michaelmas Term 1823, Masters shall not receive any Fees.

XXVIII. And whereas the said Commissioners so appointed as aforesaid have recommended that the duty of taxation in the said High Court of Chancery should cease to be performed by the masters in ordinary of the said court, and that the said masters should receive certain stated fees for the performance of their remaining duties, and that the duty of taxation should in future be performed by distinct taxing officers, to be appointed for that purpose; and that such taxing officers should be paid by salaries, and not by fees; but it is deemed more expedient that the said duty of taxation should continue to be performed as heretofore by the said masters, and that in lieu of the fees recommended for them by the said Commissioners, and also in lieu of all fees heretofore payable to them for or in respect of the said duty of taxation, or for or in respect of any other duty appertaining to the said office of master in ordinary of the said court, the said masters shall respectively receive a clear salary of three thousand pounds *per annum*; be it therefore enacted, That from and after the first day of *Michaelmas* term one thousand eight hundred and twenty-three, it shall not be lawful for any master in ordinary of the

Court of Chancery in *Ireland* to have take or receive, or to ask demand or require, any fee, reward, emolument or sum of money whatsoever, from any suitor of the said Court of Chancery, or from any solicitor or attorney, or other person whomsoever acting on behalf of any suitor of the said court, for any matter or thing whatever done or performed, or required to be done or performed, by any such master in the execution of his duty as such master in Chancery; either in cases where such master has herebefore received or been entitled to any fees, or in any other case whatever, any law usage or custom to the contrary in anywise notwithstanding; but all such fees rewards and emoluments shall, from and after the first day of *Michaelmas* term one thousand eight hundred and twenty-three, entirely cease and determine.

3,000*l.* per Annum granted to each Master in Chancery out of Consolidated Fund.

XXIX. And be it further enacted, That from and after the commencement of this Act, there shall be issued and paid and payable, during their good behaviour, to each and every master of the Court of Chancery in *Ireland* for the time being, out of, and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of such Consolidated Fund, but with preference to all other payments which shall or may be hereafter charged upon or payable out of the said fund, the annual sum of three thousand pounds *Irish* currency; every such annual sum to be issued in pursuance of this Act shall from time to time from thenceforth be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof to be made on the first of the said quarterly days which shall immediately next follow the commencement of this Act, and in proportion only to the time which shall have then elapsed from the commencement of this Act.

Proportion of Salary on Resignation or Death of Master, &c.

XXX. Provided always, and be it further enacted, That whenever any person holding, or who shall hold the office of a master in Chancery in *Ireland*, shall during the course of any quarter resign or quit his said office, or shall die, then the person so resigning, quitting, or the executors or administrators of such person so dying (as the case may be), shall be entitled to such proportionate part of such salary as shall have accrued during such part of the said quarter as such person shall have executed the said office; and every master in Chancery to be hereafter appointed shall, on the quarter day next after his appointment, be entitled to have and receive out of the said Consolidated Fund such proportion of such salary as shall have arisen from the date of the letters patent of his appointment.

Compensation to be made to the present Masters.

XXXI. And whereas the present masters in ordinary of the said Court of Chancery will, in consequence of the provisions of this Act, suffer a considerable diminution of the income hitherto received by them as masters of the said court: And whereas it is just and proper that reasonable compensation should be made to them for such losses; be it therefore enacted, That the present masters of the said court, that is to say, *Thomas Ellis*, *Thomas Ball*, *William Henn*, and *Roderick Connor*, shall, out of the sum of ten thousand pounds hereinafter reserved as a fund to compensate the several officers of the said Court of Chancery who may suffer losses in their incomes by means of the provisions of this Act, each receive a sum of two hundred pounds yearly, during the time they shall respectively remain in office, to be paid to them and each of them by four quarterly payments, to wit, on every twenty-fourth day of *December*, twenty-fifth day of *March*, twenty-fourth day of *June*, and twenty-ninth day of *September*; the first payment thereof to take place on the first of the said days which shall happen next after this Act shall take effect; and the said sums of two hundred pounds to each of said masters shall be the first payment to be made out of the said sum of ten thousand pounds herein-after particularly mentioned, and to be in lieu of and in full satisfaction of all losses or diminution of income which such

No. XXXII. 4 Geo. IV. c. 61.

person shall or may sustain by reason of the several provisions in this Act contained.

On all References and Proceedings Summonses shall be issued by Master for each Meeting.

XXXII. And be it further enacted, That in all references or matters before any master in Chancery, in which it has been heretofore customary to issue summonses for the parties to attend such suitor, the master before whom any proceeding on such reference or matter shall be had, shall continue to issue summonses from time to time, and shall not in any case, or under any pretence whatever, proceed on any such reference or matter, unless a summons for the meeting at which such proceeding shall be required shall have been signed by him, and shall be produced before him at the meeting for proceeding on such reference or matter.

For Allowance of Costs by Masters on Meetings before them rendered nugatory by Default of Parties, or in other Cases.

XXXIII. And whereas it frequently happens that delays and adjournments of meetings on references and proceedings in the offices of masters in Chancery frequently take place, for the accommodation and convenience, or through the negligence and non-attendance of one of the parties concerned in such reference or proceeding, and it is unreasonable and unjust that the party attending and prepared to proceed should pay the expence of meetings so rendered nugatory by the non-attendance of the opposite party, even though such opposite party should by a final decree, or otherwise, be ordered to pay the several costs of the cause; and according to the present practice of the Court of Chancery the masters in Chancery have not any power or authority to make any order touching the costs of the proceedings before themselves; be it therefore enacted, That at any and every meeting which shall be had before any master of the Court of Chancery in *Ireland*, upon summons issued in manner aforesaid, the master shall on the back of the summons for such meeting, to be produced to him according to the directions of this Act, endorse or cause to be endorsed, and shall sign such order as under the circumstances of the case shall to him seem fit, as to the payment of the costs of such meeting, and as to the person or persons by whom the costs of such meeting shall be paid, as between party and party, or whether such costs shall abide the rule order or decree, as to the payment of costs, which may be made on the hearing of the cause, or whether such costs shall be paid by the complainant or defendant, or other party in the cause or matter, independent of any general order or decree which may be pronounced by the court as to the general costs of such cause or matter, or whether as between solicitor or client, the costs of such meeting in the master's office, so as aforesaid rendered nugatory, shall constitute a fair and and reasonable charge against the client; and every such summons with such order so thereon endorsed, and signed by the said master, shall, on the taxation of such costs, be produced to the master when taxing such costs, who shall allow or disallow the costs in respect thereof accordingly, either as between party and party, or as between solicitor and client, or otherwise, according to the order so as aforesaid endorsed on the back of such summons; and in no case shall the master, upon the taxation of any bill of costs, allow any sum or sums as and for the expences of any such meeting or proceeding, unless the summons on which such meeting was had be produced before such master at the time of such taxation.

Where Summons shall be issued and mislaid, Costs of Proceedings allowed.

XXXIV. Provided always, and be it further enacted, That in all cases where any summons shall issue for any proceeding before the said master, and that such summons shall be lost and mislaid, that in such case it shall and may be lawful to allow the costs of such proceedings on a taxation of costs, in case it shall appear by an entry in the master's book, or by such other evidence as to the said master shall appear sufficient, that a summons has really and *boná fide* been issued on such proceedings.

Not to affect Fees of Masters, &c. previous to Michaelmas Term.

XXXV. Provided always, and be it further enacted, That nothing in this Act shall extend to prevent any master in ordinary of the said Court of Chancery, or the present registrar of the said court, or his deputies, from taking receiving or recovering all such fees as shall be legally and *boná fide* due to any such master, or the present registrar or his deputies, for any business done, or for any services performed in the execution

of the duty of his or their respective offices, at any time previous to the first day of *Michaelmas* term one thousand eight hundred and twenty-three.

XXXVI. Provided always, and be it further enacted, That nothing in this Act contained shall be construed to prevent the masters in ordinary of said court from taxing all bills of costs for business done previous to the first day of *Michaelmas* term one thousand eight hundred and twenty-three, according to the rules and regulations by which any bill of costs were taxable at or immediately previous to the day of passing of this Act.

Not to prevent Masters from taxing Bills of Costs for Business done previous to Michaelmas Term 1823.

XXXVII. And be it further enacted, That it shall and may be lawful for His Majesty, his heirs and successors, by letters patent under the great seal of *Ireland*, to give and grant unto any person who may or shall have executed the office of a master in ordinary of the Court of Chancery for the term of twenty years, or to any person having executed the said office for any shorter period not less than ten years, or who shall after his appointment to any such office have become afflicted with any permanent infirmity, disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or yearly sum of money not exceeding the sum of one thousand five hundred pounds *Irish* currency, in case the said master shall have served in such office twenty years, and not exceeding one thousand pounds in case he shall have served for such shorter period; and an annuity not exceeding two thousand pounds in case such master shall have served in such office twenty-five years; and an annuity not exceeding two thousand five hundred pounds in case such master shall have served in such office for thirty years or more; in which letters patent the cause or ground for making thereof shall be distinctly stated and specified; and the annuity or yearly sum so granted shall be paid accordingly out of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, by even and equal quarterly payments, on the fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* in every year, to such master in ordinary, from the period of which he shall resign his said office, for and during the term of his natural life, without any deduction for fees or poundage or otherwise.

The King empowered to grant Annuity to retired Masters in Chancery.

Charged on the Consolidated Fund.

XXXVIII. Provided always, and be it further enacted, That no allowance shall in any case be made under this Act to any master in Chancery by way of retired salary or pension, unless such master in Chancery shall have served in the same office during the full term of ten years.

No Retired Salary or Pension to Masters, till they have served 10 Years.

XXXIX. Provided nevertheless, and be it further enacted, That every such master in ordinary of the Court of Chancery, being desirous to resign his office, shall, before he resigns the same, take and subscribe the following oath before the Lord Chancellor of *Ireland*, or the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*:

Oath of Master resigning.

'I *A. B.* do solemnly swear, That I neither have received nor will 'receive, directly or indirectly, by myself, or by any one in trust for 'me, any sum or sums of money, gift, promise, or engagement, as a con-'sideration inducement or reward for my resignation of the office of master in Chancery.'

XL. And be it further enacted, That from and after the passing of this Act, the present and all future masters in ordinary of the said Court of Chancery in *Ireland*, do and shall hold and be possessed of their said respective offices of masters in ordinary of the said court during good behaviour, any patent or patents usage or custom to the contrary thereof notwithstanding.

Masters to hold their Office during good Behaviour.

XLI. And be it further enacted, That it shall and may be lawful to and for the Lord Chancellor of *Ireland*, or the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, upon complaint duly made, and after full inquiry into the alleged grounds thereof, by affidavit or otherwise, as he or they shall think fit, to remove any officer of the said

Officers of the Court may be removed by Lord Chancellor for Misconduct (except the Master of the Rolls, and any Master.)

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court, except the Master of the Rolls, and except any master in ordinary of the said court, from his office, for any offence or misconduct therein, which such Lord Chancellor Lord Keeper or Commissioners shall deem deserving of such punishment; and thereupon such officer shall cease to hold or be entitled to such office.

Present Deputy Registrars to be Joint Registrars, on Vacancy of present Office of Registrar of the Court.

Two Joint Registrars may be appointed by Patent.

XLII. And be it further enacted, That there shall be two registrars for the execution of the office of registrar of the said Court of Chancery; and that from and immediately after the passing of this Act *Francis Prendergast* and *Charles O'Keeffe*, the present deputy registrars, shall be the registrars of the said court, and shall hold the said office during their good behaviour respectively; and that on the death resignation or removal of either of them, it shall be lawful for His Majesty, his heirs and successors, by letters patent under the Great Seal of *Ireland*, to appoint a fit and proper person to be joint registrar of the said court with the other of them, and so on every subsequent death resignation or removal of any registrar, a new registrar shall be in like manner appointed in his place, who shall be likewise a joint officer with such other person as shall be or shall have been appointed in that behalf; and such person as shall be or shall have been appointed in that behalf, and such persons so appointed, shall be joint registrars of the said court, and shall hold their said respective offices during good behaviour respectively, and shall be authorized and empowered, and are hereby required personally to do and perform all such matters and things in the execution of the said office, as belong or appertain to the office of registrar of the said court, unless in case of illness or unavoidable necessity, in which cases it shall be lawful for such registrars respectively to appoint a substitute or deputy, such deputy and also the occasion for appointing him to be first approved by the Lord Chancellor of *Ireland*, or the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, upon a petition verified by affidavit, for such time and under such regulations as shall be directed by the Lord Chancellor Lord Keeper or Commissioners for the time being; and no such appointment of a deputy shall continue for any longer time than shall be allowed by such order, either by fixing a precise time or by some general words, or by reference to some matter capable of being distinctly ascertained, or in such other manner as the court shall think proper; and if any such appointment shall be made otherwise than as aforesaid, or for any longer period than as aforesaid, then and in every such case, such registrar making such appointment, and also such deputy, if he shall presume to act thereon, shall be deemed guilty of a contempt of court, and be punished accordingly; and it shall and may be lawful for such registrars to appoint some person during their pleasure to be their first clerk, to be approved of by the Lord Chancellor of *Ireland*, or the Lord Keeper or the Commissioners for the custody of the Great Seal of *Ireland*, and to be removeable by such registrars, with the consent of such Lord Chancellor Lord Keeper or Commissioners; and it shall be lawful for the said registrars, by themselves or such first clerk, to demand and receive all such fees as are specified and set forth in the table (number 4.) to this Act annexed, for or on account of any act matter or thing done in or concerning the business of the said office of registrar of the said court; and the said registrars shall, and they are hereby required, out of such fees, to pay to the said first clerk, a clear yearly salary of not less than five hundred pounds; and the said registrars shall also out of the said fees pay all salaries and allowances to all inferior clerks in the said office of registrar; and all official copies or certificates and other documents whatsoever, issuing from the said office of registrar, shall in all cases be signed by one of the said joint registrars for the time being.

Appointment of Deputies in case of Necessity approved of by Lord Chancellor.

Registrars may appoint a First Clerk.

Their Fees as in Table No. 4. &c.

Salary of First Clerk.

All Office Copies shall be signed by One Registrar.

Commissioners shall be appointed by Masters on Reference from the Court, to examine Witnesses.

XLIII. And whereas the Commissioners appointed to inquire into the duties salaries and emoluments of the officers clerks and ministers of justice, in all temporal and ecclesiastical courts in *Ireland*, by their first report laid before Parliament relative to the Court of Chancery in *Ireland*, have reported that several abuses and inconveniences to the

suitors had arisen from the practice of the said court, relative to the examination of witnesses, under commissions issuing out of the said court to Commissioners for that purpose; and it is expedient that all such abuses and inconveniences should be amended, and a better system introduced; be it therefore enacted, That from and after the commencement of this Act, in all cases where it may be necessary that an examination of witnesses should take place, either in chief in any cause, or in aid of any inquiry or account ordered or directed to be made or taken before any master in ordinary of the said court, other than the examinations of witnesses before the examinators of the said court, an order shall be made by such court for referring it to a master in ordinary of the said court, according to the usual practice of the said court in such case, to approve of and appoint one fit and proper person to act as examiner in all such cases so referred, and such person so to be approved of and appointed by such master shall, so far as the same is practicable, be totally unconnected with either or any of the parties interested in such cause, and such person so approved of and appointed shall be and shall be taken as and shall be considered to be an officer of the said Court of Chancery, and shall be subject to such summary interference and controul of the said court, as any other officer of the said court in this Act particularly mentioned; and a commission shall issue to such person so as aforesaid appointed, authorizing and empowering him to proceed in the examination of all such witnesses as may be necessary, in the same manner and according to the same forms as are at present established (save and except in cases where such established practice is altered by this Act) touching and concerning the examination of witnesses under commission to examine witnesses, issuing out of the Court of Chancery in *Ireland*, at any time before the commencement of this Act; and every person so approved of and appointed a Commissioner to examine witnesses under the provisions of this Act, before he shall exercise any of the duties of such Commissioner, shall take and subscribe, before a master in ordinary or a master extraordinary of the said court, the following oath, and such oath shall be annexed to the said commission, and shall be returned with the said commission to the said court, to be there filed and recorded; (that is to say),

Their Oath

'I *A. B.* do swear, That I will, according to the best of my skill and knowledge, truly and faithfully perform the duty of a Commissioner, 'to examine witnesses pursuant to the powers vested in me by the 'annexed commission; and that I will truly faithfully and without par- 'tiality to any or either of the parties in this cause, take, write down the 'examinations and depositions of all and every witness and witnesses 'who shall be produced before and examined by me, upon the interroga- 'tories filed for that purpose; and that until publication in the said cause 'shall duly pass, I will not publish disclose or make known any part of 'the purport or contents of any deposition of any witness to be taken by 'me; and further, that I will fairly and truly enter and set down in 'writing, in the dominical of such examination, the hours of the day on 'each day that I shall be employed as such Commissioner, at which I 'shall respectively commence and conclude the examination of the wit- 'nesses under such commission, as also the real and true cause or causes 'of my not commencing such examination at or before eleven of the 'clock in the forenoon, if such should be the case; and also, of my not 'continuing such examination till three o'clock in the afternoon, if such 'should be the case; as also, by whose delay or default, so far as I can 'judge, such examination was not commenced and continued [*as the case 'may be*] from eleven o'clock in the forenoon till three in the afternoon.

'So help me GOD.'

Witnesses residing more than Thirty Miles from Dublin, not compellable to

XLIV. And be it further enacted, That no witness, who shall reside more than thirty miles from the city of *Dublin*, shall in any case be obliged to leave his or her house in order to be examined before any chief examiner; but that all such witnesses who shall reside or be in *Ireland*, and more than thirty miles from the city of *Dublin*, shall and may be examined before Chief Examiner in Dublin, but may be examined by such Commissioner.

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be examined before a Commissioner so to be appointed, unless such witness, and also the party producing such witness, shall choose that he or they should be examined in *Dublin* before one of the chief examiners, or before one of the regular examiners appointed by the master in ordinary to examine in aid of inquiries or accounts to be taken before them; and it shall be lawful for every such Commissioner to cross-examine any witness produced before him, in case he shall be required so to do by any person against whom the direct examinations of such witness shall have been taken; and it shall be lawful for every Commissioner so to be appointed to receive such fees and allowances for the execution of his duty in the examination of witnesses, and for the expences of such Commissioner in travelling; and they shall respectively be subject to such other rules and regulations as shall be for that purpose from time to time authorized directed and made by any order or orders of the said Court of Chancery.

Commissioner may cross-examine for the opposite Party.

Fees, &c. shall be settled by Order of Court.

Chief Examiners may appoint Deputies in cases of Necessity, allowed by the Court.

XLV. And whereas the chief examiners of the said court are by their appointments authorized to appoint deputies, and it is not fit that such power should be exercised without sufficient reason; be it enacted, That no such chief examiner shall in any case appoint a deputy, unless and until the occasion for such appointment, and also the person to be appointed shall have been approved of by the court, upon a petition verified by affidavit; and that nothing shall be considered by the court as a fit occasion for such appointment, but inability in the principal to attend, either from sickness or from unavoidable business; and such order shall be regularly entered in the registrar's office; and no such appointment shall continue for any longer time than shall be allowed or directed by such order, either by fixing a precise time, or by some general words or by reference to some matter capable of being distinctly ascertained, or in such other manner as the court shall think proper; and if any such appointment shall be made otherwise than as aforesaid, or for any longer period than as aforesaid, then and in every such case such chief examiner making such appointment, and also such deputy, if he shall presume to act therein, shall be deemed guilty of a contempt of the court, and be punished accordingly.

Examiners and Commissioners shall take Depositions personally.

Clerk to Examiners shall take the Oath hereby prescribed.

Oath.

XLVI. And be it further enacted, That every examiner, deputy examiner, and commission examiner, shall take down the depositions of all witnesses on their examination with his own hand, and that no clerk shall be present at any such examination; and that every clerk who shall be employed before publication, so as to have any access to any deposition or deposition, shall before he shall act in the execution of such office, and he is hereby required to take and subscribe the following oath, before the examiner by whom any such clerk shall respectively be so employed, and such examiner is hereby empowered and required to administer the said oath:

'I *C. D.* do swear, That according to the best of my skill and knowledge, I will truly and faithfully execute and exercise the office of 'a copying clerk in the office of *A. B.* one of the examiners of His Majesty's High Court of Chancery in *Ireland*, whereunto I am admitted, 'so long as I shall continue to hold the said office; and that I will also 'well and faithfully preserve and keep such of the King's records where-'with I shall be entrusted, or whereunto I shall have access; and that I 'will not publish, disclose, or make known to any person or persons 'whatsoever the particulars or the purport or contents of any deposition 'or depositions copied or read by me in the execution of my said office, 'or to which I shall have access thereby, until publication thereof 'respectively shall duly pass. 'So help me God.'

For examining Witnesses as to Accounts, &c. before Masters in Chancery.

XLVII. And whereas it is expedient that provision should be made for the examination of witnesses in aid of the statement of accounts or other inquiries depending before the masters in the Court of Chancery in *Ireland* respectively, under any orders or decrees of the said court, and that such examination should be had before the said masters or their clerks respectively; be it therefore enacted, That it shall and may be lawful to and for each and every or any master of the said court, to

Masters may appoint Clerks by Instruments to be enrolled.

appoint by instrument under hand and seal any person whom he shall think proper to be the clerk of such master, during his pleasure; and such instrument being enrolled in the said Court of Chancery, such person shall be such clerk accordingly, and shall as such be an officer of the said court; and that from and after one calendar month from the passing of this Act, no person shall be or be deemed or taken or considered to be to any purpose whatsoever the clerk of any of the said masters, but under and by virtue of such appointment so enrolled.

Masters' Clerks shall take the Oath hereby prescribed.

XLVIII. And be it further enacted, That every such clerk of any Master in Chancery, before he shall act as such in the examination of any witness, shall take the following oath before the master by whom he shall be appointed, or before any other master of the said court:

'I *A. B.* do swear, That I will, according to the best of my skill and knowledge, truly and faithfully execute and exercise the office of 'master's clerk and examiner in the office of *C. D.* esquire, one of the 'masters of His Majesty's High Court of Chancery in *Ireland*, so long 'as I shall continue to hold the said office; and that I will well and 'faithfully preserve and keep all such records, interrogatories, depositions, deeds, documents, and instruments whatsoever, wherewith I 'shall be intrusted, or whereto I shall have access under or by virtue of 'my said office; and that I will not publish disclose or make known to 'any person whatsoever, the particulars purport or contents of any deposition or depositions taken copied or read by me in the execution of 'my said office, or to which I shall have access thereby, until publication 'thereof respectively shall duly pass. 'So help me God.'

Masters or their Clerks may examine Witnesses on Accounts or Inquiries before them.

XLIX. And be it further enacted, That in all cases where an examination shall be directed by the said Court of Chancery, upon under or in aid of any account inquiry or other matter whatsoever, which shall at any time be depending before any master of the said court, it shall and may be lawful to and for such master, if he shall think proper, and if he shall not so think proper, then to and for such his clerk in the presence of such master, if such master shall so think fit, without any commission whatsoever, to examine all witnesses who shall be produced before him, touching any matter as to which such examination of witnesses shall have been so directed, or arising thereout, and to take down in writing the depositions of all such witnesses, in the manner and form usual in such cases.

Masters not to accept of any thing for the Appointment of Clerk or Examiner.

L. And be it further enacted, That from and after the first day of *Michaelmas* term one thousand eight hundred and twenty-three, it shall not be lawful for any master in ordinary in the said Court of Chancery to accept of any sum of money or security as money, or to stipulate for or receive any share or proportion of the profits of the said offices, or receive any other valuable consideration whatsoever, as and for a consideration for the appointment of any person whatsoever to the office or place of a clerk or examiner to said master in ordinary.

Irish Act, 23, 24 G. III. c. 22. as to Fee of Usher, 6*d.* per 20*s.* on Money paid out of Court, repealed on Termination of existing Interest in that Office.

LI. And whereas by an Act made in the Parliament of *Ireland*, in the twenty-third and twenty-fourth years of the reign of his late Majesty, intituled *An Act for the better securing the Monies and Effects of the Suitors of the Court of Chancery and the Court of Exchequer, by depositing the same in the National Bank, and to prevent the forging and counterfeiting any Draft Order or other Voucher for the Payment or Delivery of such Money or Effects, and for other Purposes*; and reciting that the usher of the said Court of Chancery had been entitled to a fee of sixpence in the pound for all such monies as had by order of the said court been paid out of the same by the said usher; it was enacted, That every person who should obtain any decree or order for the payment of any such money as had heretofore been usually deposited with and paid out by the said usher, or which, if the said recited Act had not passed, would have been deposited with and paid out by the said usher, should, at the time of demanding, as in the said Act is mentioned, from the accountant-general of the said court, deposit and lodge with the said accountant-general such fee or sum of sixpence in the pound as aforesaid, to be handed over to the said accountant-general, to and for the proper use of

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the said usher: And whereas it is expedient that the said fee should be abolished in manner herein-after mentioned; be it therefore enacted, That from and after and upon the determination of the existing interest of the present possessor of the said office of usher of the said Court of Chancery, the said recited clause of the said recited Act shall be and the same is hereby repealed; and that no usher of the said Court of Chancery, who shall be appointed at any time after the determination of such existing interest in the said office, shall ask demand or take the said fee of sixpence in the pound, or any other fee whatever, in respect or under pretext of the payment of any such money; and that the said fee shall not be lodged or deposited with the accountant-general, or be asked, demanded, received, or paid in any manner, or by any person whomsoever; but the said fee, and all and every fee in respect of or under pretext of the payment of any such money, shall, from and after the determination of such existing interest, be and the same is hereby abolished, and shall then cease and be no longer paid or payable; any thing in the said recited Act, or any usage or custom to the contrary notwithstanding.

Such Fee abolished as to futnre Ushers.

Proviso for the existing Usher as to certain Fees claimed by him appropriated by this Act to other Officers.

LII. And whereas the present usher of the Court of Chancery in *Ireland* claims to be entitled to certain fees in the table to this Act annexed, or some of them, set down as payable to other officers of the said court, and it is reasonable that if he is entitled to any such fee or fees, the same should not be so transferred during his continuance in the said office; be it therefore enacted, That it shall and may be lawful to and for the said usher to proceed in such manner as he shall be advised to establish his right to any such fee or fees, and thereupon to recover and receive the same so long as he shall hold the said office, as fully and effectually to all intents and purposes as if this Act had not passed; but that from the time of his ceasing to hold the said office, such parts and provisions of this Act and of the said tables of fees as shall be thereby so altered or affected, shall have their full force and effect according to the terms and meaning thereof.

Clerk of the Hanaper and Clerk of the Crown shall deliver to Commissioners of Accounts quarterly, Amount of King's Silver received by them, and pay Amount to the Consolidated Fund.

LIII. And be it further enacted, That from and after the commencement of this Act, the clerk of the hanaper and the clerk of the crown of the said Court of Chancery, shall within fourteen days after the fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* in each and every year, deliver to the Commissioners of Accounts, who are required to audit the same, and to certify the balance, an account signed by such clerk of the hanaper and clerk of the crown, for or on account of the payments usually known by the name of *The King's Silver*, as the same are mentioned specified and set forth in the second column of the table (Number 10.) to this Act annexed, in the course of a quarter of a year ending on such fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* respectively, and how applied; and such clerk of the hanaper and clerk of the crown shall, within twenty-one days next after the same balance shall be certified, pay into the receipt of His Majesty's Exchequer in *Dublin* the full amount of all sums specified in every such quarterly account, and the same shall be carried to and made part of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*.

Cursitor shall pay his Deputy 100*l.* a Year.

LIV. And be it further enacted, That whenever and so long as it is or shall be lawful for the cursitor of the said Court of Chancery to appoint a deputy for the performance of the duties of the said office of cursitor, such cursitor shall allow to such deputy a salary of not less than one hundred pounds a year, payable quarterly.

Salaries to Accountant-General, and his Clerks, charged on the Consolidated Fund.

LV. And be it further enacted, That from and after the commencement of this Act, there shall be issued and paid and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland* (after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of the said Consolidated Fund, but with preference to all other payments which shall or may be hereafter charged upon or payable out of the said fund), the annual sum of one thousand two hundred and eighty pounds *Irish* cur-

rency, and which sum of money so to be issued shall from time to time be applied in payment of the following sums; that is to say, to the accountant-general of the said court, the annual sum of seven hundred pounds, for and in lieu of any salary to which he is by law entitled; to his head clerk, the sum of four hundred pounds; to his second clerk, the annual sum of one hundred pounds; and to his third clerk, the annual sum of eighty pounds; which salaries shall commence from the tenth day of *October* one thousand eight hundred and twenty-three, and shall be payable by equal quarterly payments, free and clear of all deductions whatsoever, for pells poundage or otherwise, on the fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* in every year.

Accountant-General 700*l.* per Ann., Head Clerk 400*l.* per Ann., Second Clerk 100*l.* per Ann., Third Clerk 80*l.* per Ann.

LVI. And be it further enacted, That from and after the commencement of this Act, it shall and may be lawful for the said accountant-general by himself or his clerks, to ask demand and receive for all copies of all accounts extracted from the books of the said accountant-general, the sum of two-pence for every line on the debtor side of such account, and the like sum of two-pence for every line on the creditor side of such account, if the said account shall consist of forty lines, or any less number on each side of the said account; and if the said account shall consist of any greater number of lines than forty on each side of the said account, then the sum of one pound and no more; and that from and after the commencement of this Act, it shall not be lawful for the said accountant-general, or any clerk or other person in his office, to ask demand or receive any fee for any certificate of any balance of stock or cash on any account in the books of the said accountant-general, nor for any other business matter or thing whatsoever in or relating to the office of the said accountant-general; and if any clerk or other person belonging to or employed in, or who shall hereafter belong to or be employed in the office of such accountant-general, shall take any other fee or reward on account of any business matter or thing whatsoever in or relating to the office of accountant-general, or do the duty of any clerk therein, every such person shall be deemed guilty of extortion, and shall and may be prosecuted for the same by indictment or information, or upon complaint thereof made to the said Court of Chancery shall be punished for the same as for a contempt of the said court, and shall forfeit the sum of fifty pounds.

Accountant-General may take Fees on Copies of Accounts.

No other Fee in his Office.

LVII. And be it further enacted, That it shall and may be lawful to and for the Lord Chancellor of *Ireland*, or for the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland* for the time being, from time to time at his and their will and pleasure, to appoint a broker or brokers by whom all sales and purchases of stock, with the privity of the accountant-general of the said court, shall be made, and to remove such broker at his or their will and pleasure: and such broker shall be entitled to receive the usual commission of brokerage on any such sale and purchase; and whenever such commission or brokerage shall amount to one guinea, or any greater sum, then and in any such case such broker shall thereout pay the stamp duty of half a guinea, to be charged on the approbation of such sale or purchase, by the master approving the same.

Lord Chancellor, &c. may appoint a Broker for Sale and Purchase of Stock.

LVIII. And be it further enacted, That from and after the commencement of this Act, the office of clerk of the office of reports of the said Court of Chancery shall be and the same is hereby abolished, and that all matters and things which in and by the said herein-before recited Act, made in the Parliament of *Ireland* in the twenty-third and twenty-fourth years of the reign of His late Majesty, are required to be done and performed by the clerk of the reports in the said court, shall be done and performed by the registrar of the said court; any thing in the said recited Act, or any law usage or custom to the contrary in anywise notwithstanding.

Office of Clerk of the Reports shall be abolished, and his Duty shall be performed by Registrar.

LIX. And whereas under and by virtue of an agreement made by or on

120*l.* a Year payable by the Bank of Ireland to the Clerk of the Reports under Irish Act, 36 G. III. c. 1. shall in future be paid into the Exchequer there, and carried to the Consolidated Fund.

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behalf of his Majesty with the Bank of *Ireland*, which agreement is established and confirmed by an Act passed in the Parliament of *Ireland* in the thirty-sixth year of the reign of His late Majesty King *George* the Third, intituled *An Act for securing the Payment of the Annuities, and of the Interest upon the principal Sums therein provided, for and towards the Discharge of such principal Sums, in such Manner as is therein directed, and for enabling the Officers of his Majesty's Treasury to receive certain Sums for a limited Time in manner therein mentioned, and for granting to his Majesty a certain Sum of Money out of the Consolidated Fund, and for applying a certain Sum of Money therein mentioned for the Service of the Year One thousand seven hundred and ninety-six, and for other Purposes*, the Governor and Company of the said Bank of *Ireland* were, for the considerations therein respectively mentioned, made liable to the payment of a sum of one hundred and twenty pounds yearly to the said clerk of the reports, and it is not reasonable that on the abolition of the said office for the public benefit the salary thereof should sink for the benefit of the said Bank; be it therefore enacted, That from and after the commencement of this Act, the said yearly sum of one hundred and twenty pounds shall be payable and paid by the Governor and Company of the Bank of *Ireland* into the receipt of His Majesty's Exchequer in *Ireland*, in the same manner and on the same days and times as the same hath heretofore been payable to the clerk of the reports for the time being; and the same, when so paid, shall be carried to and become part of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*.

For ascertaining Compensation to the Six Clerks, and Officers for Diminution of their Salaries and Emoluments, by Reduction of Fees under this Act, or proposed Orders of the Court, the Lord Chancellor shall make Inquiry into and ascertain Average annual Amount of such Salaries for Seven Years preceding 1st Jan. 1823, and certify the same into the Office of the Auditor-General.

LX. And whereas by and under the provisions contained in this Act, and also in certain general orders proposed to be adopted by the Lord Chancellor and Master of the Rolls in *Ireland*, transmitted on the third day of *April* one thousand eight hundred and eighteen, by the said Lord Chancellor and Master of the Rolls, in a letter to *William Gregory* esquire, for the information of His Excellency the Lord Lieutenant of *Ireland*, the emoluments of the present six clerks, and some other officers of the said Court of Chancery, and their deputies, whether expressly mentioned in this Act or not, may be considerably diminished, and it is reasonable that compensation should be made in such case to the said present six clerks, and other officers of the said court and their deputies; Be it therefore enacted, That it shall and may be lawful for the said Lord Chancellor, Lord Keeper or Commissioner for the custody of the Great Seal of *Ireland* for the time being, and the Lord Chancellor, Lord Keeper or Commissioner for the custody of the Great Seal, is or are hereby authorized and empowered and required, by such ways and means as to him or them shall seem fit and proper to ascertain the same, to make inquiry into the salaries and emoluments of each and every of the present officers of the said Court of Chancery, save and except the masters in ordinary and their deputies respectively, who shall by petition desire that such inquiry should be made, in order and with a view to ascertain the average annual amount of such salaries and emoluments in the said office respectively, for a period of seven years next preceding the first day of *January* one thousand eight hundred and twenty-three; and also in order and with a view to exclude out of such average or annual amount all such emoluments and income as shall appear, according to the best judgment that the said Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal, can form thereof, to have arisen from any new fees, or from any increase of fees introduced into any such office of deputyship, subsequent to the appointment of the present holders thereof respectively, or subsequent to the appointment of the immediate predecessor of any officer or deputy who shall have been appointed to such office or deputyship subsequent to the first appointment of the said Commissioners of Inquiry, or to have arisen from computing the contents of office sheets of seventy-two words instead of ninety words each, or to have arisen from any new fees, or from any increase of fees which may have been introduced within twenty years prior to the commencement of this Act, or from any fees which may have been demanded or received contrary to the provisions of any Act of

Parliament, or otherwise contrary to law: and for those purposes it shall and may be lawful for the said Lord Chancellor, Lord Keeper, or Commissioners for the custody of the Great Seal, and he or they are hereby authorized empowered and required, by all such ways or means as to him and them shall seem fit and proper to ascertain the same, to examine the said present officers and deputies respectively, on oath, and also in like manner to examine all such witnesses as he or they shall think proper to require, together with all such accounts books and vouchers as they shall call for; and the said Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal, shall thereupon certify under their hands and seals, or under the hands and seals of any three or more of them, the average amount of the yearly income of every such officer and deputy, so reduced by the exclusion of such emoluments and income as aforesaid, for the said period of seven years, distinguishing the gross income from the net income, and stating the particulars of the disbursements out of the gross income, which constitute the difference between the gross and the net income, so far as they can ascertain the same; and the said certificate shall contain a statement of the particular fees profits and emoluments on which such averages shall have been taken as aforesaid, and also of the fees profits and emoluments heretofore received, which shall be excluded from such averages; and the said certificate shall be filed in the office of the auditor-general in *Dublin* Castle, and shall remain there as a record, and be conclusive to all such matters and to the purposes of this Act.

Chancellor to certify the Average of Salaries and Emoluments where Vouchers cannot be procured.

LXI. Provided always, and be it enacted, That in case, from the want of sufficient accounts or vouchers, or from any other cause, the Lord Chancellor Lord Keeper and Commissioners for the custody of the Great Seal of *Ireland*, shall be unable satisfactorily to ascertain the annual amount of the salary and emoluments in the office of any of the said present officers on the average of such period of seven years, then and in such case it shall and may be lawful for the said Lord Chancellor Lord Keeper or Commissioners, at the request of any of the said officers, to certify the average annual income arising from the salary and emoluments in the office of any such officer, as amounting to a sum equal to the smallest sum which shall have been certified by the said Lord Chancellor, Lord Keeper or Commissioners, as being the annual average amount of the salary and emoluments in the office of any other officer of the same class.

Lord Chancellor shall inquire into Income of Officers in future Years,

LXII. And be it further enacted, That at the end of one year from the passing of this Act, or at any time within six calendar months after the said period, it shall and may be lawful to and for the Lord Chancellor of *Ireland*, Lord Keeper or Commissioners for the custody of the Great Seal for the time being, to ascertain in like manner as aforesaid the gross and net income in the office of each and every of the said present officers and deputies, who shall by petition desire the same, including therein all and every salary and emolument arising from such office for and during the said year; and if the said gross income shall be less than the average gross income in the office of such officer or deputy so certified as aforesaid, then to inquire and ascertain in like manner whether such deficiency, or any and what part thereof, arose from this Act, or and from any of the provisions therein, or the said orders; and in case it shall appear that such deficiency, or any part thereof, did so arise, then to certify the amount of such deficiency so arising from this Act, or any of the provisions thereof, or the said orders; and so in every succeeding year to inquire and certify in like manner, so long as any of the said present officers or deputies shall live and retain their said offices respectively; and every such certificate shall in like manner be filed in the said auditor-general's office, and shall be conclusive as to the said matter.

and certify amount of Deficiency resulting from this Act, &c. and so annually while any of the existing Officers continue.

Within Three Months after filing such annual Certificate of Deficiences, Lord Lieutenant may order them to be made good out of the Consolidated Fund not exceeding 10,000*l.*

LXIII. And be it further enacted, That within three calendar months next after the filing of any such annual certificate of such Lord Chancellor of *Ireland*, or Lord Keeper or Commissioners for the custody of the Great

Seal for the time being, it shall and may be lawful to and for the Lord Lieutenant or other chief governor or governors of *Ireland* for the time being, to order that a sum equal to the amount of the said deficiency, so certified to arise from this Act, or from the said general orders, or to such proportion thereof as such Lord Lieutenant or other chief governor or governors shall think proper, shall be paid out of the Consolidated Fund to such officer or deputy, his executors or administrators, in full compensation for such deficiency: Provided always, that the whole amount of the sum so to be paid in any one year to the several officers aforesaid, other than and except the principal registrar of the said court, and the usher of the said court, shall not exceed the sum of ten thousand pounds *Irish* currency.

Office of Principal Registrar ceasing under this Act, Lord Chancellor shall ascertain and certify the net annual Amount of Emoluments on Average of Seven preceding Years.

LXIV. And whereas by and under the provisions of this Act, the office of principal registrar of the said court, now held as a sinecure by letters patent under the Great Seal of *Ireland*, for the term of the natural life of the present possessor thereof, is to cease and determine, and it is just and reasonable that compensation should be made to such officer for the same; be it therefore enacted, That it shall and may be lawful to and for the person who at the time of the passing of this Act shall be the principal registrar of the said court, to apply by petition to the Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, to make inquiry into the income and emolument of such office of principal registrar of the said Court of Chancery, for a period of seven years next preceding the passing of this Act; and thereupon it shall and may be lawful for the said Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal, and they are hereby authorized empowered and required to make such inquiry, and to ascertain the same accordingly, in such manner, and with such view and intent, and on such examination, as in and by this Act is specified for ascertaining the net average annual amount of the salaries and emoluments of other officers of the said court, and their deputies respectively; and the said Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal, shall certify under his or their hand or hands and seals, the amount of the annual income of the said principal registrar on an average of the said seven years, in like manner and subject to the like reduction as in and by this Act they are directed to certify the same average annual amount of the income and emoluments of any other officers, and their deputies as aforesaid; and such certificate shall be filed in the office of the auditor-general in *Dublin Castle*, and shall remain there as a record, and be conclusive as to all such matters, and to the purposes of this Act.

Such net average annual Amount shall be paid to the present Registrar during his Life.

LXV. And be it further enacted, That from and after the filing of such certificate, there shall be issued and be paid and payable to the person who at the time of the passing of this Act shall hold the said office of principal registrar of the said Court of Chancery, and his assigns, yearly and every year during the term of his natural life, out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland* (after payment of all sums previously charged on the said fund) a sum equal to the sum which shall be so ascertained by such certificate to be the net annual average amount of the income and emoluments of the said office of principal registrar of the said court as aforesaid, in full compensation for the same, and such annual sum shall be paid and payable to such person, and his assigns, during the term of his natural life, by four quarterly payments in each and every year, free and clear of all taxes and deductions whatsoever, on every twenty-fifth day of *March*, the twenty-fourth day of *June*, the twenty-ninth day of *September*, and the twenty-fifth day of *December*; the first payment thereof to be made on the first of the said days which shall next happen after the commencement of this Act, and in proportion only to the time which shall immediately next happen after the commencement of this Act, and also such proportion of any such quarterly payment as at the time of the decease of such person shall be due from the quarter day next preceding the time of such decease.

LXVI. And whereas some delay may occur in ascertaining the amount of the annual income of the said principal registrar, and procuring said certificate as herein-before directed, during which time said principal registrar would be totally deprived of the income which he had heretofore enjoyed from his said office; be it therefore enacted, That in the meantime, and until such certificate shall be obtained and filed as aforesaid, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of *Ireland* for the time being, to order that there shall be issued and be paid and payable to the person who at the time of the passing of this Act shall hold the said office of principal registrar of the said Court of Chancery, and his assigns, such annual sum or sums of money, on account of the compensation to be thereafter awarded to said principal registrar, as to said Lord Lieutenant or other chief governor or governors of *Ireland* shall appear to be just and reasonable, but not exceeding the net average amount of the income and emoluments of the said office, as reported by the Commissioners appointed to inquire into the duties salaries and emoluments of the officers clerks and ministers of justice, in all temporal and ecclesiastical courts in *Ireland*, for three years preceding said report; such annual sum to be paid and payable to such principal registrar, and his assigns, by four quarterly payments in each and every year, free and clear of all taxes and deductions whatsoever, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof, on account as aforesaid, to be made on the first of said days which shall next happen after the commencement of this Act, and in proportion to the time which shall immediately next happen after the commencement of this Act; such payments (if any) to said principal registrar, or his assigns, to be credited on the foot of such annual income as it shall appear by said certificate, when filed as aforesaid, that said principal registrar is entitled to; and in case the sum or sums so to be paid as aforesaid shall exceed the sum to which said registrar shall appear by said certificate to be entitled to, then and in such case such excess or overplus shall be deducted from the quarterly payment which shall next happen after the filing of said certificate.

Till Certificate is obtained, the Lord Lieutenant may direct the Issue of a Compensation to the Principal Registrar.

LXVII. And whereas by and under the operation of this Act, and of the said general orders proposed to be adopted by the Lord Chancellor and Master of the Rolls in *Ireland*, the emoluments of the usher of the said Court of Chancery will be considerably diminished, and it is reasonable that compensation should be made to the said officer; be it therefore enacted, That upon the petition to the Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, by the persons holding the office of usher of the said court at the passing of this Act, it shall be lawful for the said Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal, to make inquiry into and to ascertain the average annual amount of the salaries and emoluments of the said officer, for a period of seven years next preceding the first day of *January* one thousand eight hundred and twenty-three, and to certify the average amount thereof, subject to the like reduction, and in like manner in all respects as the said Lord Chancellor, Lord Keeper or Commissioners are by this Act required to do, in making inquiry into, and in ascertaining the salaries and emoluments of other officers of the said court; and thereupon it shall be lawful for the Lord Chancellor of *Ireland*, or Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, to ascertain the gross and net average annual income of the said officer, and to ascertain any deficiency arising in the said net income by the operation of this Act, or any of the provisions therein contained, or from the said orders, and to certify the amount of such deficiency annually as long as the said officer shall live and retain his said office, in like manner in all respects as is by this Act directed with respect to the annual income and deficiencies therein of any other officers of the said court; and such certificate shall be filed in like manner as is herein required with respect to any certificates relating to such other officers of the said court; and it shall be lawful for the Lord Lieutenant or other

For ascertaining annual Compensation to the Usher of the Court of Chancery, for Diminution of Emoluments of his Office.

No. XXXII. Geo. IV. c. 61.

chief governor or governors of *Ireland* for the time being, to order that a sum equal to the amount of such deficiency so certified, shall be paid out of the said Consolidated Fund to such usher his executors or administrators, as such compensation for such deficiency, in like manner as by this Act is directed and provided with respect to any other officers of the said Court of Chancery.

Additional Duties required by this Act, &c. to be performed by certain Officers will produce additional Expence of Clerks to them.

LXVIII. And whereas, by and under the provisions of this Act, and of the said general orders, certain duties will be imposed upon divers officers of the Court of Chancery, which have not usually and ought not by law to have been performed by them respectively, and for the performance whereof the employment of additional clerks, or increased payment to the clerks by them hitherto employed, may become necessary; and it is reasonable to provide that the employment of such additional clerks and such increased payments should not reduce the net income of such officers as held their respective offices during the term of their respective lives, or during their good behaviour, or who have legally purchased their respective offices; be it therefore enacted, That each and every such officer shall be at liberty, at any time within six months after the commencement of this Act, to apply by petition to the said Lord Chancellor Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland*, requesting that he or they would proceed to inquire and certify what clerks it may be reasonable and necessary, in consequence of the provisions of this Act, and of the said general orders, to employ in addition to such clerks as have heretofore been usually employed or ought to have been employed by such officer, and what salary it may be reasonable and necessary to allow them, and what further and increased payment it may be reasonable to make to the clerks by them hitherto employed, beyond that payment to which such Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal shall consider that such officers ought hitherto to have been liable; and thereupon it shall and may be lawful for the said Lord Chancellor Lord Keeper or Commissioners for the custody of the Great Seal, and they are hereby required to make such inquiry in like manner and by the ways and means above directed, and to certify under his or their hand and seals the number and description of such additional clerks, and such salaries as may appear to the said Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal reasonable for their remuneration in each such office respectively, and also such further and increased payment to the clerks heretofore employed by any such officer; and every such present officer having obtained such last-mentioned certificate shall, upon the occasion of accounting as above directed, have credit for the sums expressed in such last-mentioned certificate, as an addition to the gross income so certified as above directed by the said Lord Chancellor Lord Keeper or Commissioners for the custody of the Great Seal for the time being, shall include the salaries and further payments above referred to: Provided always, that every such officer shall on such accounting satisfy the Lord Chancellor, Lord Keeper or Commissioners for the time being, that he has actually employed such clerks, and made such payments as referred to in such certificate respectively.

Such Officers may apply to Lord Chancellor, who shall inquire into the Amount of additional Salaries necessary for the Clerks of such Officers.

and certify accordingly

For providing annual Compensation to Officers permitted to sell Offices, the Value of which shall be diminished by this Act.

LXIX. And whereas certain of the officers of the said Court of Chancery are now by law permitted to sell their respective offices, and the said offices are likely to be rendered of less value by and under the provisions of this Act, and of the said general orders; and it is reasonable to provide some compensation for such offices in reference thereto; be it therefore enacted, That if any such officer shall, at any time after the passing of this Act, so sell his office, such officer shall be at liberty, at any time within six months after the sale thereof, to apply by petition to the Lord Chancellor of *Ireland*, or to the Lord Keeper or Commissioners for the custody of the Great Seal, for the time being, to examine into the amount of the compensation payable to such officer under the provisions of this Act; and the said Lord Chancellor, Lord Keeper or Commissioners respectively, shall thereupon, by all or such of the ways and means as they shall think proper, examine and certify, in like manner

as aforesaid, the average annual amount of such compensation; and such last-mentioned certificate shall yearly and every year, during the life of such officer, be of the like force and efficacy for and towards entitling such officer to compensation, as if he had continued to hold his said office, and annually receive such certificate.

Return of Certificates and Orders for Compensation shall be made to Parliament, before issuing Amount out of Consolidated Fund.

LXX. And whereas it is by this Act provided, that certain sums to be hereafter ascertained may be paid out of the Consolidated Fund, for the compensation of certain persons holding offices in and under the said Court of Chancery, other than and except the principal registrar and usher of the said court herein-before particularly mentioned; be it enacted, That a return of all sums certified as deficiencies arising in consequence of this Act, or of the regulations and orders of the court as aforesaid, together with copies of the certificates relating thereto, whether for compensation or allowances for additional clerks, filed in the office of the auditor general, and the orders of the Lord Lieutenant or other chief governor of *Ireland* made thereon, shall be laid before both Houses of Parliament immediately after the commencement of the sessions of Parliament next ensuing the making of any such order, by the Lord Lieutenant or other chief governor as aforesaid; and that no issue of money for compensation as aforesaid shall be made from the Consolidated Fund, till the same shall have been submitted to Parliament.

Act not to prejudice any Action against any Officer for Misconduct.

LXXI. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to limit, abridge, bar, prejudice or defeat any action or indictment, or any remedy or proceeding whatsoever, which at any time heretofore may or might have been brought, found, had or taken against any officer deputy or clerk in or under the said Court of Chancery, for or in respect of any misconduct in office which may have occurred or taken place, or which may take place at any time before the commencement of this Act; but that all such actions, indictments, remedies and proceedings for any such misconduct, may be brought, found, had, or taken, as if this Act had never been made.

Penalties shall be recovered by Action in the Superior Courts at Dublin.

LXXII. And be it further enacted, That all and every penalties and penalty to be incurred and forfeited in pursuance or by virtue of this Act, or any of the matters herein contained, shall and may be sued for and recovered by any person who will sue for the same, by action of debt, bill, plaint or information in any of His Majesty's Courts of Record at the Four Courts *Dublin*, and not elsewhere, in which no essoign protection or wager of law, nor more than one imparlance, shall be allowed; and that one moiety of every such penalty shall be for the use of His Majesty, his heirs and successors, and the other moiety thereof to the use of the person or persons who shall sue for the same.

Commencement of Act.

LXXIII. And be it further enacted, That this Act, and the several provisions therein contained, shall commence and take effect from the first day of *Michaelmas* term one thousand eight hundred and twenty-three, except in such cases where any other period is mentioned for the commencement of any of the provisions thereof.

Act may be amended this Session.

LXXIV. And be it further enacted, That this Act may be amended, altered or repealed, by any Act or Acts to be passed in this present Session of Parliament.

SCHEDULE.

TABLES TO WHICH THIS ACT REFERS.

FEES PAYABLE TO

No. 1.—Lord Chancellor.
No. 2.—Deputy Keeper of the Rolls.
No. 3.—Clerks or Examiners of the Masters in Chancery.
No. 4.—Registrar.
No. 5.—Six Clerks.
No. 6.—Examiners.

No. 7.—Usher.
No. 8.—Lord Chancellor's Secretary.
No. 9.—Clerk of the Custody of Papers.
No. 10.—Clerk of the Hanaper.
No. 11.—Cursitor.
No. 12.—Clerk of the Recognizances.
No. 13.—Registrar and Clerk of Faculties.
No. 14.—Serjeant at Arms.
No. 15.—Pursuivant.
No. 16.—Pursebearer.
No. 17.—Trainbearer.
No. 18.—Crier.

TABLES

TO WHICH THIS ACT REFERS.

No. 1.—TABLE OF FEES

Payable to the Lord Chancellor of Ireland, or to the Lord Keeper or the Commissioner for the custody of the Great Seal of Ireland.

		£.	s.	d.
	On Letters Patent:			
1.	For every patent with one denomination	0	10	0
2.	And for every subsequent denomination in a patent	0	10	0
3.	For gloves, in addition to the fee of ten shillings upon every patent appointing or translating a Bishop, or creating a Baron, containing one denomination	3	9	0
4.	And for every subsequent denomination in such patent	3	9	0
5.	For a Sheriff's patent	0	2	0
6.	Upon a vacate entered on the inrolment of letters patent	1	2	9
	Cursitors Writs:			
7.	For every cursitor's writ, except writs of error	0	0	4½
8.	For every writ of error	0	0	6
	Faculties:			
9.	For every confirmation of a dispensation, upon every pound sterling with which such faculty is taxed	0	2	8
	Chancery Writs:			
10.	Upon every Chancery writ	0	0	6

No. 2.—TABLE OF ALL THE FEES

Which it shall be lawful for the Deputy Keeper of the Rolls, the Clerk of the Inrolments, or any clerk or other person employed in the Rolls Office in Ireland, to demand or accept, for or on account of any act matter or thing done in or concerning the business at the Rolls Office.

		£.	s.	d.
1.	For inrolling every Duke's patent	19	0	0
2.	For do. every Marquis's patent	19	0	0
3.	For do. every Earl's patent	19	0	0
4.	For do. every Viscount's patent	19	0	0
5.	For do. every Archbishop's patent	19	0	0
6.	For do. every Bishop's and baron's patent	11	10	0
7.	For do. every Baronet's patent	6	13	4
8.	For do. every patent of a Commissioner of Appeal	1	14	9½
9.	For inrolling every other patent, of whatever description the same may be, except patents for the Commissioners of the Treasury Revenue and Excise, Commissioners of Accounts and Inquiry, for each roll, consisting of seven hundred and twenty words, which such patent shall contain	1	6	8

	£.	s.	d.
Any one fraction of a roll to be charged as an entire roll, but not more than one fraction to be charged for in any one document.			
10. For inrolling every act or order in council	0	16	3
11. For surrender before the Lord Chancellor of any grant patent or article inrolled, and for entering vacate thereof on the roll	1	10	0
12. For inrolling every Letter of Guardianship or Committeeship	0	5	5
13. For inrolling every deed or other document which shall be brought to the office for inrolment, for each roll or skin of seven hundred and twenty words which such deed or other document shall contain, and for any one fractional part of a roll	0	10	0
14. For filing and entering every bill, whether an original or amended bill, and every rejoinder	0	0	6
15. For every bill amended on the file	0	2	8½
16. For the attested Copies of Pleadings, and of all records and other documents, of which copies shall be required from the office, for each sheet of seventy-two words	0	0	6½
And in case the record to be copied be written in Latin or old court hand, such further sum for the clerk as the taxing officer shall deem reasonable.			
17. For re-attesting all Copies of Pleadings, for every twenty sheets of seventy-two words which such copy shall contain	0	1	0
18. For every search, whether for pleadings, patents, deeds or documents, and taking down for inspection the roll or document sought for, when found	0	2	6
19. For every Constat, or Certificate of any Patent, Grant, Deed, or other document inrolled, including the fee for search, and taking down the roll	0	10	0
20. For every search for and furnishing Certificate of the Pleadings, filed in any cause, with the periods of filing the same, and the length thereof, and also, that any particular pleading has not been filed	0	2	6
21. For filing every Certificate of Naturalization	0	2	8
22. For do. every Convert's Certificate	0	0	6
23. For Certificate of Qualification of a Catholic	0	1	0
24. For every Decree given in Chancery	0	6	0
25. For every Six Clerks Writ	0	0	6
26. For every Broad Seal	0	5	0
27. For attending in any of the courts, with any record or pleading	0	10	0

No. 3.—TABLE OF ALL THE FEES

Which it shall be lawful for the Clerks or Examiners of the Masters in the Court of Chancery in Ireland, or any other person employed in the Masters Office, to demand or accept for or on account of any matter or thing done in or concerning the business of the said office.

	£.	s.	d.
1. For examining and taking down in writing the deposition of the first witness in any cause or matter, in answer to the first interrogatory, in each book of depositions on which he shall be examined	0	3	8
2. For like to every other interrogatory which shall be exhibited at the desire of the party to such witness	0	2	2
3. For examining and taking down in writing the deposition of the second and each other witness who shall be examined in such cause or matter, in answer to each interroatory which shall be exhibited to such witness	0	2	2

No. XXXII. 4 Geo. IV. c. 61.

	£.	s.	d.
4. For each sheet, consisting of seventy-two words, of copies of such depositions and interrogatories when required, and attesting same as true copies	0	0	6½
5. For examining a witness when the Examiner shall be required to go out of his office for the purpose	1	2	9
6. Copies of reports, charges, discharges and all other documents which shall be required from the office of the Master or his Examiner, for each sheet containing seventy-two words, reckoning however the year when expressed by figures as one word, and any number of pounds expressed by figures as one word, and the like as to shillings and as to pence:—thus, £1 2 9 to be calculated as three words	0	0	6½
7. For preparing each pair of leases to be executed by the Master, of lands set by him pursuant to any order of the court, and the recognizance to be entered into by the tenant and his sureties, for payment of the rent and performance of the covenants therein, attending at the Master's Chambers on the occasion of such recognizance and lease being acknowledged and executed, and attendance on the filing of the recognizance, but no other charge on occasion of every pair of leases	1	16	0
8. Making search for any papers which have been more than three years in the office, and of which no copy shall be required by the party seeking it	0	3	4
9. For examining a witness out of his office under the authority of any special order of the court, subject, however, to be increased by the court making the rate of such fee part of the order, not exceeding five guineas per day for going 30 miles from Dublin	1	2	9
10. For preparing and ingrossing draft of the Master's report for signature, for every folio of seventy-two words	0	0	6½
11. For every folio of seventy-two words for Master's clerk, for ingrossing such interrogatories as are prepared by the Master himself	0	0	6

No. 4.—TABLE OF ALL THE FEES

Which it shall be lawful for the Registrar or Deputy Registrar of the Court of Chancery in Ireland, or any clerk or other person in their employment, to demand or accept for or on account of any act matter or thing done in or concerning the business of the office of Registrar.

	£.	s.	d.
1. For receiving and entering every appearance	0	0	10
2. For entering every answer	0	0	10
3. For every schedule to the answer, if sworn	0	0	10
4. For every schedule, if not sworn	0	0	6
5. For entering every attachment	0	1	0
6. For the discharge of every person in contempt	0	2	0
7. For entering and marking as entered every set of interrogatories	0	0	6
8. For entering and marking as entered every replication	0	0	9
9. For entering and marking as entered every rejoinder, each defendant	0	0	6
10. For entering a joint commission to examine witnesses or otherwise	0	1	0
11. - - - - If it be ex parte	0	0	6
12. For entering rule in rule book, whether on petition or otherwise	0	2	6
13. For drawing entering and signing every order, and furnishing a copy thereof, if not exceeding one side or sheet containing seventy-two words	0	2	6

	£.	s.	d.
14. - - - - If the order exceed one side or sheet, for every side or sheet after seventy-two words, each . . Any one fraction of a sheet to be charged ten-pence, as an entire sheet, but not more than one fraction to be charged for or on any one document.	0	0	10
15. For drawing entering and signing every order upon hearing of a cause, and furnishing a copy thereof . .	0	6	8
16. - - - - If it exceed one sheet or side of seventy-two words, for every side or sheet of seventy-two words .	0	0	10
17. For drawing entering and signing every decretal order, and furnishing a copy	0	6	8
18. And if it exceed one side or sheet of seventy-two words, for every side after	0	0	10
19. For drawing entering and signing every final dismiss, and furnishing a copy	0	6	8
20. And if it exceed one side or sheet of seventy-two words, for every side after	0	0	10
21. For drawing entering and signing every order of guardianship	0	2	6
22. And if it exceed one side or sheet of seventy-two words, for every side after	0	0	10
23. For drawing entering and signing every order upon a petition, and furnishing a copy . . .	0	2	6
24. If it exceed one side or sheet of seventy-two words, for every such side or sheet after . . .	0	0	10
25. For entering, filing, copying and signing any report, certificate, exception, account, submission, award, Commission of Partition, Judge's certificate, order of the Lords, or articles of impeachment . . .	0	3	6
26. If the copy exceed one side or sheet of seventy-two words, for such side or sheet after, the year where expressed in the document by figures to be calculated as one word, the number of pounds expressed as one item to be reckoned as one word, and the same as to shillings and pence	0	0	10
27. For every copy of notes on hearing . . .	0	6	8
28. - - - - If it exceed one side or sheet of seventy-two words, for every such side or sheet after . .	0	0	10
29. For the copy of every report, order, certificate, exception, or other document required from the office (other than the copies to be furnished at the time of entering as before set forth), for every side seventy-two words .	0	0	6½
30. For every search per term, looking into the rule books of the three last years not however being considered a search	0	0	4
31. For every certificate upon search . . .	0	2	6
32. Entering and filing a set of depositions . .	0	3	6
33. Inspecting Accountant-General's draft on Bank of Ireland, and comparing same with the order, checking and countersigning	0	6	8

No. 5.—TABLE OF ALL THE FEES

Which it shall be lawful for the Six Clerks in the Court of Chancery in Ireland, or any clerk or other person employed by them, or any of them, to demand or accept for or on account of any act matter or thing done in or concerning the business of the offices of the said clerks.

	£.	s.	d.
1. For the appearance of every defendant who appears separately to any subpœna to appear and answer, to revive, or to elect a clerk, or pursuant to an order appointing a Parliamentary clerk	0	3	4

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	£.	s.	d.
2. If two or three defendants appear by the same clerk at the same time, for the appearance of such two or three defendants	0	3	4
3. If more than three, for every three defendants	0	6	8
4. Term fee for a plaintiff or for plaintiffs	0	3	4
5. Term fee for every defendant who answers separately	0	3	4
6. If two or three defendants answer jointly, the term fee to be	0	3	4
7. If more than three, for every three defendants	0	6	8
8. For the signature of the Six Clerk to each pleading, and to each schedule which shall be annexed thereto	0	3	4
9. For signing each charge, discharge, consent, and any other document to which the signature of the Six Clerk shall be required, and for which no other fee is provided in this schedule	0	3	4
10. For drawing engrossing and signing every petition, and attending the Lord Chancellor or Master of the Rolls if required therewith	0	13	4
11. For preparing and copying notice of any motion in court, and making copy for the use of the court	0	2	6
12. For every other notice	0	2	6
13. On every motion, whether by Six Clerk or Counsel, and whether grounded on petition or on notice, or a rule or motion of course	0	3	4
14. Where a motion shall be argued on different days, then for each time the motion shall be called on and argued	0	3	4
15. For attending Registrar, and setting down cause on list for hearing	0	3	4
16. For attending the hearing of a cause, for each day the cause shall be called on, and at hearing, but not for any days which the cause may be in the day list, and not called on	0	6	8
17. For each attendance which the Six Clerks shall actually give before the Master on references, either at the desire of the Master, or at the request of the client or solicitor	0	6	8
18. If the reference continues more than one hour, then for each hour the Six Clerk shall actually attend	0	6	8
19. For transmitting a copy or copies of a summons to attend on a reference served at the Six Clerks Office, to the solicitor or solicitors by whom such Six Clerk shall be employed, and whose client or clients may have a direct interest in the matter of such reference, for every such copy	0	0	6
And for the transmission thereof	0	1	0
And no Six Clerk transmitting such copy to be allowed to charge for attendance thereon before the Master, unless he actually does attend at the special requisition of the Master or solicitor.			
20. To the Six Clerk of the party who issues a summons to attend before the Master, for entering and filing the summons and making out copies for service thereof, and serving the same upon all such of the Six Clerks as are to be served, for every such copy	0	0	6
And for the transmission thereof	0	1	0
And this fee being intended in lieu of the fee heretofore charged for constructive attendance before the Master, no fee for such attendance is to be charged, unless the attendance is actually given at the special requisition of the Master or solicitor.			
The solicitor who obtains such summons shall, on his own responsibility, mark at the foot of the summons the names of the parties on			

	£.	s.	d.
whose solicitor the same ought to be served; and the Six Clerk served shall write on the summons itself an admission of the service; and such admission shall be evidence of the same; and the Six Clerk shall receive for the same	0	1	0
21. For attending the Registrar at his desire, or the desire of the party or his solicitor, on passing a decree	0	6	8
22. For attending a defendant with exhibits, to be viewed previous to answering any bill interrogatories or affidavit	0	6	8
23. If more than one hour, for every additional hour	0	6	8
24. For attending at the Stamp Office with an answer engrossed, and sworn in England and foreign parts, pursuant to order to have same stamped	0	6	8
25. For drawing a recognizance, and attending the master approving same	0	13	4
26. For attending to vacate recognizance, and signing a vacate on the roll, cancelling the recognizance, and signing certificate of cancellation thereon	0	13	4
27. Attested copy of exceptions, for each sheet of seventy-two words	0	0	6½
28. For drawing a docket of a decree to be signed by the Lord Chancellor, for each office sheet of seventy-two words	0	0	6½
29. For inrolling the decree, per sheet of seventy-two words	0	0	6½
30. For preparing and engrossing a Writ of Execution or exemplification of a decree, for each skin of eight hundred words	1	6	8
31. For inrolling Letters of Guardianship and Committeeship	0	6	8
32. For preparing and engrossing exemplification thereof, and signing the same	0	13	4
33. For the exemplification of any other order	0	13	4
34. For drawing and signing a Caveat against presenting a docket of a decree or a petition to the Lord Chancellor, without notice to the Six Clerk	0	6	8
35. Retaining fee for a third person, where no appearance or term fee is charged	0	3	4
36. For every Writ of Attachment and Seal, whether the same shall issue against one or more defendants, and whether for want of appearance or answer, or under an order of the court	0	7	10
37. Proclamation of Rebellion, and Seal	0	9	6
38. Commission of Rebellion, and Seal	0	9	6
39. Serjeant at Arms, and Seal	0	9	6
40. Writ of Sequestration, and Seal	0	13	4
41. Distringas against a Corporation, and Seal	0	13	0
42. For every Writ of Subpœna, and Seal	0	2	6
43. For every Subpœna to rejoin, Subpœna Ad Testificandum, Subpœna to hear Judgment, and Seal	0	5	0
44. For every Subpœna for Costs, and Seal	0	7	6
45. For every Writ of Subpœna to revive, to elect a clerk, to review and reverse, and Seal	0	9	6
46. For every Subpœna to answer in perpetuam rei memoriam, and Seal	0	9	6
47. For every Scire Facias, and Seal	0	9	6
48. For every Ducis Tecum, and Seal			
49. For every Writ of Dedimus Potestatem, to take an answer or answers and to examine witnesses, commission to arm the Master or Arbitrators, and Seal	0	9	6
50. For every Injunction, and Seal	0	9	6
51. For every Supersedeas, and Seal	0	9	6
52. For every Commission of Perambulation, oaths, notice, and regulating the return, and Seal	0	9	6

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	£.	s.	d.
53. For every Writ of Partition, oaths, notice, and regulating the return, and Seal	0	9	6
54. For every Habeas Corpus	0	9	6

No. 6.—TABLE OF ALL THE FEES

Which it shall be lawful for the Examiners in Chief of the Court of Chancery in Ireland, or any clerk or other person employed by them or in their offices respectively, to demand or accept for or on account of any act matter or thing done in or concerning the business of the Examiner's Office.

	£.	s.	d.
1. For the first witness examined in a cause (whether upon one interrogatory or upon several interrogatories) in the Examiner's Office, or by either of the persons holding the situation of Chief Examiner, including the Cryer's fee of four-pence	0	3	8
2. For every other witness examined in like manner in the same cause, including the cryer's fee . . .	0	2	2
3. For the Copy of all such Depositions as are taken by the Examiners in Chief in person, to be paid by the party lodging the interrogatory or interrogatories, for each sheet of seventy-two words	0	0	10
4. For all other copies of interrogatories and depositions required by any person out of the office, for each sheet of seventy-two words	0	0	6½
5. For every search within twelve months for any document or documents, of which there shall not be a copy or copies required by the person desiring to have such searches made	0	2	6
6. For looking into every term before	0	0	4
7. For every deed or other document which shall be exhibited to a witness on his examination, by or before the Examiners in Chief, or either of them, and for certifying the same as having been so exhibited . . .	0	2	0
8. For every certificate which the officer shall be required to give	0	2	6
9. For swearing and examining every witness, where the officer shall, under the authority of the court, go out of his office for the purpose	0	16	8
If the officer shall be required to go beyond the limits of the Circular Road, Dublin, the charge for such examination to be such as shall be expressed in the order.			
10. For comparing with originals, and re-attesting the copies of any depositions which shall be required to be made use of in any Court of Common Law, or on an appeal, for each book or depositions	0	6	8

No. 7.—TABLE OF ALL THE FEES

Which it shall be lawful for the Usher of the Court of Chancery in Ireland, or Deputy Usher, or any clerk or other person employed in the Usher's Office, to demand or accept for or on account of any act matter or thing done in or concerning the business of the Usher's Office.

	£.	s.	d.
1. For all money deposited pursuant to orders of Court, and for which, under the provisions of the Act twenty-third and twenty-fourth George Third, chapter the twenty-second, poundage is continued when paid out .	0	0	6
The said fee to continue payable so long only as the present Usher shall hold the Office, for each pound.			

	£.	s.	d.
2. For receiving and filing every affidavit, and furnishing an attested copy thereof to the party filing the same, for the first sheet of seventy-two words (including the Cryer's fee of four-pence on each affidavit)	0	2	4
3. For every other sheet of seventy-two words each, if such affidavit exceeds one sheet	0	0	10
4. For preparing and furnishing an attested copy of any affidavit which shall have been filed in the office, for the first sheet of seventy-two words	0	1	6
5. For every other sheet of seventy-two words, if it exceeds one	0	0	6½
But the present Usher to be allowed, during his tenure of the office, to charge	0	0	10
Any one fraction of a sheet to be charged sixpence halfpenny as an entire sheet, but not more than one fraction to be charged for on any one document.			
6. For every search, where the party desiring such search shall not require a copy of the document sought for, if found	0	3	4
7. For preparing and signing every certificate which the officer shall be required to give	0	2	6
8. For carrying any record into court, or any of the Master's offices, by command of the Lord Chancellor or Master of the Rolls	0	3	4
9. For attending in any of the Courts of Law, or any other court, with any record of the office, for each day that the officer shall attend therewith	0	10	0

No. 8.—TABLE OF ALL THE FEES

Which it shall be lawful for the Secretary to the Lord Chancellor of Ireland, or any clerk or other person employed by such Lord Chancellor, to demand or accept for or on account of any act matter or thing done in or concerning the business of the said office.

	£.	s.	d.
1. For the Patent of an Archbishop, Duke, Marquis, or Earl	5	15	0
2. For the Patent of a Viscount or Baron	4	12	0
3. For the Patent of a Bishop, Chancellor, or Chief Justice	3	9	0
4. For the Patent of a Baronet Dean or Judge	2	6	0
5. For each name or denomination in a Fiant	0	9	0
6. For a Warrant for a Custos Rotulorum	5	0	0
7. For a Warrant for a Justice of the Peace	2	6	0
8. For a Warrant for a Writ of Ease	1	15	0
9. For a Warrant for a Master Extraordinary	2	6	0
10. For a Warrant for a Sheriff	0	13	6
11. For a Warrant for a Writ de Excommunicatio Capiendo; for a Writ of Ad Quod Damnum; for a Commission of Delegates; for a Commission of Valuation; for a Commission of Lunacy; for electing a Coroner; to exonerate a Coroner; each	0	13	6
12. For every other Warrant to the Hanaper	0	13	6
13. For a Fiat on a Significavit	0	13	6
14. For a Letter Missive	1	0	0
15. For an order upon a petition, whether such petition shall be preferred in a cause, or in a matter of a minor or lunatic, or in a respondent case, or entitled both in a cause and matter, or in two or more causes	0	12	6
16. For every decree or dismiss, of which a docket shall be presented for the Lord Chancellor's signature	0	13	6
17. For a Caveat	0	4	6
18. For every Injunction	0	4	6
19. For every Writ of Error which shall be signed by the Lord Chancellor	0	4	0

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	£.	s.	d.
20. For copies of Judge's notes or report of a trial,-for every sheet of seventy-two words	0	0	6½

And any one fraction of a sheet to be charged as an entire sheet, but not more than one fraction to be charged for on any one document.

The fees to be exclusive of any charged for the Lord Chancellor's Trainbearer.

No. 9.—TABLE OF ALL THE FEES

Which it shall hereafter be legal to accept in the office of the Clerk of the custody of Papers in the Court of Chancery in Ireland, in matters of idiots and lunatics.

	£.	s.	d.
1. Filing reports, first sheet	0	3	6
2. . . . . every succeeding sheet . . .	0	0	10
3. Filing affidavit and account, first sheet . .	0	2	4
4. . . . . every succeeding sheet . .	0	0	10
5. Attested copies of reports accounts and affidavits, first sheet	0	1	6
6. . . . . every succeding sheet . . .	0	0	10
7. Making out order, first sheet	0	2	6
8. . . . . every succeeding sheet . . .	0	0	10

No. 10.—TABLE OF ALL THE FEES

Which it shall be lawful for the Clerk of the Hanaper and Clerk of the Crown in Chancery in Ireland, or his deputy, or any clerk or other person employed in the Hanaper or Crown Office, to demand for accept on account of any act matter or thing done in or concerning the business of the said offices.

Services on account of which Fees may be demanded.	Rates of Fees. £.	s.	d.	King's Silver. £.	s.	d.
1. For preparing engrossing and issuing the Patent of a Duke	20	0	0	1	0	3
2. For ditto the Patent of a Marquis . .	15	0	0	1	0	3
3. For ditto the Patent of an Earl . .	12	13	4	1	0	3
4. For ditto the Patent of a Viscount . .	8	13	4	1	0	3
5. For ditto the Patent of a Baron . .	6	16	8	1	0	3
6. For ditto the Patent of a Baronet, and silk and silver strings	4	6	8	—		
7. For ditto the several Patents of Donation, &c. on the appointment of an Archbishop .	10	13	4	2	0	6
8. For ditto on the appointment of a Bishop .	6	13	4	3	0	9
9. For ditto the Patent of a Dean . .	1	6	8	1	0	3
10. For drawing engrossing and issuing every Grant of Ecclesiastical Livings . .	1	6	8	1	0	3
11. For ditto every Grant of Fairs and Markets	1	6	8	1	0	3
12. For ditto every Patent of a Lord Chancellor or Judge	1	13	4	1	0	3
13. For drawing engrossing and issuing every Patent for Attorney-General, Solicitor-General, Serjeants at Law, Masters in Chancery, or other officer . .	1	13	6	1	0	3
14. For ditto every Grant of an Escheatorship .	1	13	6	1	0	3
15. For ditto of the office of Commissioner of Customs or Excise . . .	1	13	6	1	0	3
16. For ditto of the office of Commissioner of the Treasury, Commissioner of Accounts, Commissioner of Stamps, Commissioner of Barracks, Commissioner of Appeals, and any other office of the like nature . .	1	13	6	1	0	3
17. For ditto of Custos Rotulorum . . .	1	13	4	—		

Services on account of which Fees may be demanded.	Rates of Fees. £.	s.	d.	King's Silver. £.	s.	d.
18. For ditto of the office of Sheriff, to be distributed as directed by the Act of 12th Geo. I. chap. 4, and this Act	3	0	3	0	10	0
19. For ditto of offices not before enumerated (except as after mentioned)	1	13	6	1	0	3
20. For ditto of a pension	1	5	0	1	0	3
21. For ditto of an annuity, per skin	1	0	0	1	0	3
22. For ditto of lands, 1st skin	1	5	0	1	0	3
- - - each subsequent skin	1	5	0			
23. For ditto of an invention, per skin	1	0	0	1	0	3
24. For every grant of a pardon (not in forma pauperis) per skin	1	0	0	1	0	3
25. For every Commission appointing a Master Extraordinary	1	13	6	—		
26. For every Commission of Inquiry	0	12	0	—		
For a Commission of the Peace, dedimus and oaths:						
27. If for an Earl, Viscount, Bishop, or Lord	2	8	0	0	2	0
28. If for a private person	1	18	4	0	2	0
For preparing engrossing and issuing every Charter for Cities and Towns corporate, and Denization of a private person:						
29. For the first skin	1	6	8	—		
30. For each succeeding skin	1	0	0	—		
31. For preparing engrossing and issuing all Letters Patent not before enumerated (except these herein-after mentioned), per skin	1	0	0	—		
32. For the Seal of every patent, except Sheriff's Patent, and Patents of Offices	0	6	3	0	15	0
33. For ditto of every Patent of Office, except Sheriff's Patent	0	19	6	0	1	6
34. For ditto, Letters of Guardianship	, -		-	1	5	5
35. For every Commission of Delegates	0	12	0	—		
36. For every Commission of Lunacy	0	12	0	—		
37. For every Writ of Venire facias and Mittimus for transferring a record	0	17	4	—		
38. For every Writ of Elegit that shall be prepared and issued from the office	1	2	0	—		
39. For every Writ of Extent, Writ of Ad Quod Damnum, which shall be prepared in and issued from the office	0	12	0	—		
40. For every Writ of Scire Facias, and every office Writ made out in the office (except Writs for the election of Members to serve in Parliament, and Writs for superseding Justices of the Peace)	8	8	0	—		
41. For every side seal	0	0	7½	0	0	4½
42. For the transmiss of every record to the Court of King's Bench, per roll	0	13	4	—		
43. For entering every order on proceedings at the Petty Bag side	0	2	0	—		
44. For copy of every order when required (be it long or short)	0	2	0			
45. For filing every Dedimus to swear a Justice of the Peace, with return thereon, and oaths annexed	0	3	4	—		
46. For ditto, every writ pleading or other document that the officer shall be required to file in the office	0	3	4	—		
47. For preparing issuing and attesting Copies of						

Services on account of which Fees may be demanded.	Rates of Fees. £. s. d.	King's Silver. £. s. d.
Inquisitions, affidavits, or any other records or documents of which copies shall be required from the office, for each sheet of seventy-two words	0 0 8	—
48. For search for any record or document, and furnishing extract of such document if found	0 3 4	—
49. For every certificate that shall be required from the office	0 2 6	—
50. For every Commission of Bankrupt	0 3 3	
51. For every Supersedeas to a Commission of Bankrupt	0 1 1	—
52. For receiving and transmitting a Barrister's consent to act as a Commissioner on controverted elections of Members to serve in Parliament	0 6 8	—
53. For administering the oaths of office to Lords of Treasury, Judges, Barons, Master of the Rolls, Attorney-General, Solicitor-General, King's Counsel, Masters in Chancery, Assistant Barristers, Six Clerks, and all other officers who shall be sworn before the Lord Chancellor, each	2 5 6	—
54. For swearing in every Barrister at Law	1 2 9	—
55. For preparing and issuing all writs necessary for electing a Temporal Peer, and for all other acts necessary to be and usually done by the Clerk of the Crown and Hanaper on such elections	50 0 0	—

All Commissions of Assize and Gaol Delivery, Commissions of Oyer and Terminer, Commissions of Associations, Commissions to try pirates, and all other special commissions for Government; Writs for Election of Members to serve in Parliament; Letters Patent appointing Lords Justices; Letters Patent appointing Commissioners for the custody of the Great Seal; Licence of Absence to the Lord Chancellor; Pardons in forma pauperis, and Supersedeas's to Justices of the Peace; to be prepared and issued as heretofore, without any fee or reward to the officer, such services being sufficiently recompensed by the salary allowed to the office.

No. 11.—TABLE OF ALL THE FEES

Which it shall be lawful for the Cursitor of the Court of Chancery in Ireland, or any clerk or other person employed in his office, to demand or accept for or on account of any act matter or thing done in or concerning the business of the Cursitor's office.

	£	s.	d.
1. For every Writ of Audita Querela	0	9	7
2. - - Writ of Covenant	0	3	8
3. - - Writ of Entry	0	3	8½
4. - - Writ of Dedimus	0	4	8½
5. - - Writ of Dedimus Mittimus	0	16	0½
6. - - Original writ to keep a bill or note within the statute	0	9	7½
7. - - And if any of the said writs shall exceed the length of three office sheets of seventy-two words each, then for every office sheet which such writ shall contain beyond the said number of three sheets, a further fee of	0	1	0

		£.	s.	d.
	Any fraction of a sheet to be reckoned as an entire sheet; but not more than one fraction of a sheet to be charged for on any one document.			
8.	Writ of Certiorari	0	4	5½
9.	Writ of Recordari	0	3	7½
10.	Writ of Error to the twelve Judges or to Parliament	2	18	2½
11.	Writ of Error Coram Vobis	0	16	0½
12.	Common Error to a Sheriff or Seneschal	0	4	5½
13.	Writs of Replevin and Recaption issuing together	0	15	5½
14.	Writ of False Judgment	0	3	7½
15.	Writ of Dower	0	3	7½
16.	Writ of Partition	0	3	7½
17.	Writ of Quare Impedit ne Admittas	0	7	7½
18.	Appeal in Murder	2	18	2½
19.	Writ of Right Patent	0	3	8½
20.	Justicies in Case	0	3	7½
21.	ditto in Debt	3	3	7
22.	Homine Replegiando	0	10	3
23.	——— Alias	0	8	0
24.	——— Pluries	0	4	0
25.	Precipe to the Outlawry	0	1	0
26.	Certificate	0	2	6
27.	For any attested copies which shall be required from the office, for the first sheet	0	1	1
28.	For every sheet after	0	0	6½
29.	For every Writ of Capias issuing out of the Court of Common Pleas	0	0	4

No. 12.—TABLE OF ALL THE FEES

Which it shall be lawful for the Clerk of the Recognizances in the Court of Chancery in Ireland, or any clerk or other person employed in his office, to demand or accept for or on account of any act matter or thing done in or concerning the business of the office,

	£.	s.	d.
1. For filing entering and enrolling every recognizance, and giving certificate of the enrolment thereof	0	15	10
2. For preparing and furnishing an attested copy of any recognizance enrolled in the office	0	6	8
3. For making search for recognizance entered into by any particular person, and giving abstracts, if required, of the recognizance (if any) appearing on record to be entered into by such person, or making search for any particular recognizance, of which a copy shall not be required by the person desiring to have such search made	0	3	4
When a search and certificate is required of a certain recognizance being filed, or not being filed:			
4. For making such search, and furnishing certificate thereof	0	5	10
5. If there shall be more than one abstract, a further fee for each abstract after the first, of	0	1	0
6. For a search and negative certificate, pursuant to the statute, where there shall be no abstract, or but one abstract taken	0	6	8
7. If there shall be more than one abstract taken, a further fee for each abstract after the first, of	0	1	0
8. For preparing vacate of recognizance, entering same on the roll, and giving certificate of recognizance being vacated	0	6	8

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c. 61.

No. 13.—TABLE OF ALL THE FEES

Which it shall be lawful for the Registrar and Clerk of the Faculties of the Court of Chancery in Ireland, or any clerk or other person employed in his office, to demand or accept for or on account of any matter or thing done in or concerning the business of the office,

	£.	s.	d.
1. For every confirmation of a dispensation taxed at four pounds, one-third of one-fourth of two-thirds in each pound, being	0	4	5½
2. If the tax exceeds four pounds, the like in proportion.			
3. If the tax be under four pounds, and not under two pounds	0	3	4
4. If the tax be under two pounds, and not under one pound six shillings and eight-pence	0	2	0
5. If the tax be under one pound, one-third part thereof.			
6. The Clerk of the Faculties likewise to receive sixteen-pence per pound out of every pound of the tax of faculties (according to the proportion payable to the King before the said tax was granted to the Primate of Ireland and his successors), in consideration of wax parchment and paper expended in the execution of the said office .	0	1	4

No. 14.—TABLE OF ALL THE FEES

Which it shall be lawful for the Serjeant at Arms of the Court of Chancery in Ireland, or any deputy or other person employed by him, to demand or accept for or on account of any act matter or thing done in or concerning the business of the office.

	£.	s.	d.
1. For the arrest of a gentleman or common person (5 marks)	3	6	8
2. And for his guard by the day	1	0	0
3. For all journies which the Serjeant at Arms or his deputy shall actually perform in execution of his duty, and for his expences, per mile	0	1	6
4. For the return upon every writ directed to the Serjeant at Arms	1	2	9
5. For every certificate of a person being in custody .	0	2	6

No. 15.—TABLE OF ALL THE FEES

Which it shall be lawful for the Pursuivant of the Court of Chancery in Ireland, or any clerk or other person employed in his office, to demand or accept for or on account of any act matter or thing done in or concerning the business of the said office.

	£.	s.	d.
1. For all journies which the Pursuivant shall actualy perform in execution of his duty, and for his expences, per mile	0	1	6
2. Caption fee on the arrest of every person against whom an attachment shall issue directed to the Pursuivant .	0	6	8
3. For drawing and engrossing bail bond for the appearance of any person or persons who shall be arrested under an attachment, approving of security, and attending to have bond executed	1	2	9
4. For the custody of each person arrested, from the day of his arrest until committed to the Marshal, fees at the rate per diem of	0	2	6
5. For executing every attachment for non-payment of money (in lieu of the fee of two shillings and sixpence per day for the custody of persons arrested), where the money levied or paid shall not exceed one hundred pounds, for every twenty shillings . . .	0	1	0

	£.	s.	d.
6. When the sum levied or paid shall exceed one hundred pounds, for every twenty shillings which shall be levied or paid to the amount of one hundred pounds one shilling; and for every twenty shillings beyond the sum of one hundred pounds . . . . . The said fees to be demandable from and payable by the persons against whom such attachments shall issue, and to be in lieu of all other fees, except the Pursuivant's travelling expences	0	0	6
7. Warrant to the Pursuivant's Bailiff or officer . .	0	6	8
8. If to Special Bailiff named by the party . .	1	2	9
9. Return of a Non est Inventus	0	2	4
10. Return of a Cepi Corpus	1	2	9
11. In all journies that the Pursuivant's Bailiff or officer shall actually perform in the execution of his duty, per mile	0	0	8
12. Travelling fee to a Special Bailiff . . .	0	0	4
13. For a Sheriff's Patent	0	6	8

No. 16.—TABLE OF ALL THE FEES

Which it shall be lawful for the Pursebearer to the Lord Chancellor of Ireland, or any person for him, to demand or accept in right or under colour of the said office of pursebearer.

	£.	s.	d.
1. For every denomination in each patent . . .	0	4	6
2. For every Sheriff's Patent	0	3	6
3. For every Commission of a Justice of the Peace .	0	1	0
4. For every Commission of Rebellion . . .	0	4	6
5. For every Writ de Excommunicato Capiendo Dedimus, to swear a Master Extraordinary, Commission of Delegates, and each close-sealed Writ . . .	0	2	3
6. For every Private Seal	0	9	0
7. For every Commission of Bankrupt . . .	0	4	6
8. For every Supersedeas to a Commission of Bankrupt .	0	4	6

No. 17.—TABLE OF ALL THE FEES

Which it shall be lawful for the Trainbearer of the Lord Chancellor of Ireland, or any person for him, to demand or accept in right of the said office of trainbearer.

	£.	s.	d.
1. For an Order of Guardianship	0	9	0
2. For every Justice of the Peace	0	5	0
3. For every Sheriff's Patent	0	5	0
4. For every single Patent of Honour . . .	2	0	0
5. For every broad Seal	0	2	0
6. And for each and every grant contained in every Broad Seal	0	2	0
7. For every Writ of Error	0	2	6
8. For every Commission of Bankrupt . . .	0	1	0
9. For every Counsel sworn and admitted to the bar .	0	5	5
10. For every King's Counsel sworn and admitted .	0	5	5

No. 18.—TABLE OF ALL THE FEES

Which it shall be lawful for the Cryer of the Court of Chancery in Ireland, or any person for him, to demand or accept in right of the said office as cryer.

	£.	s.	d.
1. For every Judge sworn, Prime Serjeant, Attorney and Solicitor-general, Puisne Serjeant, and King's Counsel, each and every of them	2	5	6
2. For every Counsel sworn and admitted to the bar .	2	3	9

No. XXXIII. 4 Geo. IV. c. 70.

	£.	s.	d.
3. For swearing any person before the Lord Chancellor in any employment	2	5	6
4. For every decree or dismiss obtained in the said court	0	5	5
5. For every affidavit filed in the Usher's Office	0	0	4
6. For every Writ of Entry and Covenant in the Cursitor's Office	0	0	4
7. For every deponent in the Examiner's Office	0	0	4

[No. XXXIII.] 4 George IV. c. 70.—An Act for the better Administration of Justice in the Equity Side of the Court of Exchequer in *Ireland*.—[11th *July* 1823.]

WHEREAS it hath appeared by reports made to the King's most excellent Majesty from the Commissioners appointed by his Majesty, upon an address of the knights citizens and burgesses in Parliament assembled, to inquire into the duties and emoluments of the officers clerks and ministers of justice in all temporal and ecclesiastical courts in *Ireland*, that the several ministerial officers of the equity side of His Majesty's Court of Exchequer in *Ireland* require regulations for ensuring the more easy cheap and expeditious administration of justice in the said court: And whereas some of such regulations may be carried into effect by general orders of the said court; but certain other regulations are required which cannot be carried into effect without the aid of Parliament: And whereas it is expedient that the fees to be taken by the said several officers of the said court should be ascertained and regulated by law. May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

The Officers of the Court of Exchequer empowered to take the Fees specified in Tables annexed.

That from and after the commencement of this Act, it shall and may be lawful for the several officers in of or belonging to the said court, mentioned and described in the several tables to this Act annexed, to ask, demand, have, receive, take, and accept, for and by reason, and on account of the several acts matters and things to be done in or concerning the business of their several and respective offices, or of the several services to be performed touching or concerning such offices, the several fees payments and sum and sums of money in the said tables hereunto annexed respectively mentioned, and none other or greater fees or sums of money whatever; and that no officer or attendant of the said court, nor any deputy or clerk of any such officer, nor any person acting in any of the said offices of the said court or doing any part of the business thereof mentioned in the said tables, or either of them, shall ask demand or receive from any of the suitors of the said court, or from any person or persons whomsoever on their behalf, any fee or sum or sums of money whatever, on account of or for the performance of, or under pretence of performing any act matter or thing whatsoever, in anywise relating to the business of the said court, not mentioned in the said tables, or some or one of them, as payable for or in respect of such Act matter or business, except under the provisions of this Act, any law usage or custom at any time heretofore made used or exercised, to the contrary in anywise notwithstanding; and that the said tables and all directions matters and things contained therein shall be taken as part of this Act to all intents and purposes whatsoever.

Fees may be altered or new Fees allowed by Order of the Court.

II. Provided always and be it enacted, That it shall and may be lawful for the said court from time to time to vary and alter the amount of any of the fees aforesaid by decreasing or increasing the same, or to abolish any of the said fees altogether; and also to direct and authorize the payment of any new or additional fee to the several officers and persons in the said tables mentioned or any of them, or to any other persons, for or in respect of any matters or things mentioned in the said tables or any of them, or of any other matter or things to be done in the execution of the duty of the office of such officers or

persons respectively; and all such fees, the amount whereof shall be so altered, and also such new or additional fees which shall be so made payable, and also any order for the abolition of any fee shall be specified and set forth in a table or tables to be made by order of the said court and signed by three at least of the barons thereof, and such order shall specify the grounds and reasons upon which such fees shall have been altered abolished or made payable respectively; and a copy of every such order signed as aforesaid shall be transmitted by the chief baron of the said court to the Lord Lieutenant or other chief governor or governors of *Ireland* who shall cause copies of the same to be laid before both Houses of Parliament immediately after the commencement of the then next session of Parliament; and thereupon every such fee shall be and be deemed and taken to be a legal fee according to the terms of such order, and payable and receivable as such from and after the last day of such session of Parliament, as if the same had been included in any of the tables annexed to this Act.

Such orders shall be transmitted to the Lord Lieutenant, who shall cause Copies thereof to be laid before Parliament.

III. Provided also and be it enacted, That it shall and may be lawful for the said court to make any such order or orders of the said court for the altering or discharging any course of proceedings in suits pending or to be brought at the equity side of the said court, and to direct that such process shall issue and in such manner and course in all such suits as to the said court shall appear fit and expedient, in the same manner and with the same force and effect in all respects as if this Act had not passed; and that no clause matter or thing contained in any Act or Acts from time to time in force in *Ireland* for the granting or regulating the payment of any stamp duty or any process in any suit at the equity side of the said court shall extend or be construed to extend to prevent alter or affect the course of any of such proceedings or the issuing of any such process, or to warrant or authorize the receipt of any greater fee by the alteration of the number of words in any sheet of proceeding; and that the several stamp duties from time to time imposed or payable on any such proceeding or process shall be paid and payable upon the same as altered by the said court, or upon such proceeding or process as shall be substituted for any which may be abolished, such process or proceeding being by such order declared to be so substituted.

Court may alter Course of Proceedings in Suits, and Stamp Duties shall be applied to Process so altered.

IV. And be it further enacted, That if any officer at the equity side of the said court, mentioned in the said tables or either of them, shall at any time after the commencement of this Act ask or demand, or shall have, take, accept, or receive from any suitor solicitor or other person whomsoever, save and except only from the principal officer by and under whom any such deputy or clerk or other person shall be immediately employed, any gift, fee, reward, or remuneration, for or by reason, or on account or under pretext of any service of their own, or of any person or persons employed by or under them respectively in any of the offices of the said court, or if any such deputy or clerk, or other person, shall ask or demand, or shall have, take, receive, or accept any gift fee or reward, gratuity or remuneration, for or by reason, or on account or under pretext of the services of their principals or employers, or for, or by reason, or on account, or under pretext of any matter or thing whatever done in and about the business of their respective offices, other than and except only such fees and sums of money as shall from time to time be lawful, under the provisions of this Act, every deputy clerk or other person so offending shall for every such offence forfeit and lose the sum of one hundred pounds.

Penalty on any Deputies or Clerks taking any Fees contrary to this Act, 100*l.*

V. And be it further enacted, That if any person who shall hold any of the said offices mentioned and described in any of the tables to this Act annexed shall by himself or by his deputy or by any clerk or person authorized on his behalf, wilfully and knowingly ask, demand, have, take, receive, or accept, directly or indirectly, any gift, fee, reward, gratuity, or remuneration, for or by reason, or on account or under pretext of any service in any of the offices in the said tables specified, other than and except only such fees and sums of money as shall from time to time be lawful under the provisions of this Act, or shall wilfully and knowingly ask,

Penalty on Principals in Offices taking Fees contrary to this Act, 100*l.*, Loss of Office, and Incapacity.

No. XXXIII. 4 Geo. IV. c. 70.

demand, have, take, or receive or accept, directly or indirectly, any gift, fee, reward, gratuity, or remuneration, for or by reason, or on account or under pretext of any service in any way concerning or relating to the business of any of the said respective offices not then allowed to be taken under the provisions of this Act, every such person so offending shall for every such offence forfeit and lose the sum of one hundred pounds, and shall also forfeit and lose all and every office and offices in or under the said court, which such person shall hold or be possessed of at the time of such offence, and shall for ever after be incapable and incapacitated from holding any office in or under the said court.

Oath of Office by Officers of the Court of Exchequer.

VI. And be it further enacted, That from and after the third day of the *Michaelmas* term next after the passing of this Act, no person whatsoever shall in anywise act in the business of any of the offices or places in the equity side of the said Court of Exchequer, mentioned in the tables to this Act annexed, or any of them; or shall do any act relating to the business of any such office, whether as a principal or deputy, or a clerk, until such person shall have taken and subscribed before the chief or one other baron of the said court, an oath in the form following; that is to say,

Oath.

'I *A. B.* do solemnly swear, That I will, to the best of my knowledge 'skill and judgment execute and perform such of the duties of the 'office of at the equity side of the Court of Exchequer 'in *Ireland*, as I shall personally execute, and that I will well and faith- 'fully pay every deputy or clerk whom I shall or may at any time employ 'in any part of the business of the said office such salaries and allowances 'as they shall from time to time be respectively entitled to by law, or 'such additional sum as I shall contract or agree to pay them respec- 'tively; and that I will not by myself, or by any deputy or clerk, or other 'person or persons, ask or demand, or have, take, accept, or receive any 'gift, fee, reward, gratuity, or remuneration whatever, other than such 'as shall at the time of receiving the same be authorized and allowed by 'the tables which shall be then in force, or under the provisions of some 'Act of Parliament; and that I will in all things relating to my said 'office conduct myself according to the rules and regulations which shall 'from time to time be in force for the regulation of such office, and of the 'business thereof. 'So help me GOD.'

Penalty on acting without having taken the Oath, 20*l.* per Day.

And any officer, deputy, clerk, or other person, who shall at any time after the third day of the said *Michaelmas* term personally act in any matters relating to the business of any such office in the said court, without having taken and subscribed such oath as aforesaid, shall for every day on which he shall so act forfeit the sum of twenty pounds.

Officers shall affix Tables of Fees in their Offices.

VII. And be it further enacted, That every officer at the equity side of the said Court of Exchequer shall, on or before the third day of the *Michaelmas* term next after the passing of this Act, and every officer of the said court who shall be hereafter appointed, within three calendar months after he shall have taken the oath of office required by this Act, affix or cause to be affixed or hung up in his office a table of all such fees as it shall be then lawful to receive pursuant to the directions of this Act, in his said office, in respect of the business thereof; and if at any time any of such fees shall be altered or abolished, or any new fee or fees authorized according to the directions of this Act, in respect of the business of such office, then and in every such case such officer shall, within one week from the time of such change, alter such table so kept in his office pursuant and according to such change, and to the order for making the same; and such table shall at all times be written or printed in fair and legible characters, and shall be framed and glazed so as to be preserved from being erased or altered in any other manner save as aforesaid, and shall be always kept affixed or hung up in such manner that the same shall be accessible to and legible by all persons resorting to such office; and in case such table shall not be so affixed or hung up, and continually kept so framed and glazed and legible in the said office, such officer shall, for every day on which such table shall not be so kept and legible as aforesaid in such office, forfeit the sum of twenty pounds.

Penalty 20*l.* per Day.

VIII. And be it further enacted, That every officer at the equity side of the said Court of Exchequer shall, in every five years, that is to say, in *Michaelmas* term one thousand eight hundred and twenty-eight, and in like manner on some day in *Michaelmas* term one thousand eight hundred and thirty-three, and so in *Michaelmas* term in every fifth year succeeding, deliver to the chief remembrancer of the said court, in open court, a table or schedule, under the hand and seal of such officer respectively, specifying and setting forth the rate of all fees charged or received in the office of such officer at any time during five years then next immediately preceding, and paid to or received by such officer, or any his deputy or clerk, or other person whatsoever, directly or indirectly, for the benefit of such officer, or his deputy or clerks respectively; and every such officer shall, at the time of the delivery of such table, make oath to the truth thereof in open court, to the best of his knowledge and belief, which oath shall be written at the foot of such table, and shall be signed by such officer.

Every Officer shall, in Michaelmas Term 1828 and 1833, and so regularly in each Five Years, deliver to the Chief Remembrancer, on Oath, a Table of Fees taken in his Office during the preceding Five Years.

IX. And be it further enacted, That the chief remembrancer of the said court shall, upon the receipt of such tables, carefully examine the same and the several fees therein stated and set forth, and shall compare the same with the several fees contained in the tables to this Act annexed, and with such orders of the said court as may have altered the said fees, or any of them, or may have added any new or other fees; and in case it shall appear to such chief remembrancer, upon examination, that any fee or fees contained in the said table shall exceed in amount the fee allowed to be taken according to the tables to this Act annexed, or any orders of the said court for altering the same, or shall not be included in or allowed by such tables or orders respectively, the said chief remembrancer shall file all such tables of fees to which on examination no objection shall appear, or which shall be approved of by the said court, and shall transmit a copy of every such table of fees so filed, signed by such chief remembrancer, to the clerk of His Majesty's Privy Council in *Ireland*, on or before the thirty-first day of *December* next ensuing every such *Michaelmas* term in which the same shall have been delivered as aforesaid.

Chief Remembrancer shall check such Tables by the Tables to this Act annexed and subsequent Orders, and if correct shall file them, and transmit Copies to the Privy Council

X. And be it further enacted, That the said chief remembrancer of the said court shall, on or before the thirty-first day of *December* next after every such *Michaelmas* term, in each fifth year, transmit to the clerk of His Majesty's Privy Council in *Ireland* a list of all officers of the said court who shall have neglected or omitted to deliver the tables required by this Act, for the five years preceding such *Michaelmas* term; and if any officer shall omit or neglect to deliver such table as is required by this Act, or if the chief remembrancer shall neglect or omit to transmit to the Privy Council copies of the tables so delivered as aforesaid, by the officers of the said court, or any of them, or shall neglect or omit to transmit a list of such officers so neglecting to deliver in such tables, every such officer and chief remembrancer so making default shall forfeit the sum of two hundred pounds.

Remembrancer shall transmit to Privy Council Lists of Officers omitting to return Table of Fees.

Penalty for Neglect, 200*l.*

XI. And be it further enacted, That from and after the first day of *August* next after the passing of this Act, it shall not be lawful for any person who now holds or shall hereafter hold any of the offices of the said court, mentioned and specified in any of the tables to this Act annexed, or who now is or shall hereafter be appointed a deputy or clerk to any person who now holds or shall hereafter hold any such office, to act or practise, either in his own name or in the name of any other person or persons, as an attorney or solicitor, in any of the courts of law or equity in *Ireland;* and every such officer or person who shall directly or indirectly, by himself, or any other person in partnership with or in trust for him, act as such attorney or solicitor, contrary to the true intent and meaning of this Act, shall for every time he shall so act forfeit the sum of two hundred pounds.

Officers of the Court disabled from practising as Solicitors or Attornies.

Penalty 200*l.*

XII. And be it further enacted, That all officers of the said Court of

Officers shall keep Writing Clerks in their Offices, and pay them not less than 1½*d.* per Office Sheet.

No. XXXIII. 4 Geo. IV. c. 70.

Exchequer who shall be entitled to any fees under the provisions of this Act, shall employ in their respective offices a sufficient number of writing clerks to make copies of bills, pleadings, affidavits, orders, decrees, and other things belonging to their respective offices, and required by or on behalf of the suitors of the said court, and to do and perform all other business requisite to be done and performed in such respective offices, so that the business of any suitor of the said court shall not be unnecessarily delayed therein; and such officer shall pay to every such writing clerk for all copies made by such writing clerk after the rate of not less than one penny halfpenny for every office sheet, consisting of seventy-two words of every such copy made by such clerk, and for a part or portion of any office sheet; and it shall not be lawful for any such officer to cause or direct, or knowingly permit any such copy, or any part thereof, to be made in any other place or by any other person, than in the proper office of such officer, and by a writing clerk employed in such office, and paid exclusively by such officer after the rate aforesaid, at least; and every such officer shall be responsible for the accuracy of every copy so made in his office, and for the same being duly compared with the original from which it shall be made; and every such officer who shall cause or direct, or knowingly permit any copy to be made contrary to this Act, or who shall not pay the writing clerk for writing the same, according to the rate by this Act directed at the least, shall for every such offence forfeit the sum of twenty pounds.

Officers shall not permit Copies to be made out of their Offices.

Penalty 20*l.*

In case of Want of Room, the Court may make annual Order for permitting Copies to be made out of the Office.

XIII. Provided always, and be it enacted, That if at any time or times it shall be ascertained by affidavit or otherwise, to the satisfaction of the court, that any officer of the said court hath not in his office sufficient room for the reasonable accommodation of himself, his deputies and assistants, and of a sufficient number of clerks to do and perform the business so required to be done in such office as aforesaid, then and in every such case it shall and may be lawful to and for such court to make an order, declaring that the same has been so proved, and that it shall be lawful for such officer to cause direct or permit any such copy, or any part thereof, to be made in any place and by any person whatever; and that for every copy or part of a copy which shall be so made in any other place than the said office, such officer, in ascertaining and charging his fees in respect thereof, shall allow out of the fees usually payable on such copies or parts of copies, one penny halfpenny for every office sheet thereof; and every such order shall be good and valid, and shall be a sufficient justification in all respects to any person acting in pursuance thereof, for one year from the date thereof, unless sooner rescinded, and shall and may be renewed from time to time, until by reason of new buildings or new arrangements, or otherwise, sufficient room shall have been obtained for the purposes in that behalf aforesaid; and the residue only of the fees to which such officer would then be lawfully entitled in case such copying had been regularly done in his office, which shall remain after such deduction as aforesaid, shall be deemed and taken to be the lawful fees or fee of such officer in such case.

Solicitors may prepare Copies of Decrees, Affidavits, &c. and mark Fees thereon.

XIV. Provided also, and be it further enacted, That it shall and may be lawful for any attorney or solicitor of the said court to prepare, for the attestation of the proper officers of the said court, engrossments and copies of all or any such decrees, reports, accounts, affidavits, and other matters or things as such attorney or solicitor shall have occasion to file; and that every such officer shall compare and attest such copy, and shall in such case deduct and allow, out of the fee payable to such officer for such attested copy, the sum of one penny halfpenny for every office sheet thereof, and shall mark the fees on such documents, pursuant to this Act, as if such copy had been prepared by such officer; and further, that it shall and may be lawful for any attorney or solicitor of the said court to prepare drafts of decrees and all other documents, in like manner as the attornies or solicitors of the said court have heretofore been accustomed to do.

In all Copies, &c., Fraction of a Sheet, &c. may be charged as a whole Sheet.

XV. And be it further enacted, That in all copies, engrossments,

exemplifications, or extracts of any rules, pleadings, decrees, or other matters chargeable according to the length thereof, whether the charge for the same shall be computed according to the sheet, the skin, the roll, or the side, a fraction of a sheet, skin, roll, or side respectively, of any such copy, engrossment, exemplification, or extract, may be charged for by any officer as an entire sheet, skin, roll, or side; provided that on each such copy, engrossment, exemplification, or extract respectively, there shall be charged only one such fraction of a sheet, skin, roll, or side respectively.

In all Copies, Sums Dates and Numbers shall be expressed in Figures and charged as such.

XVI. And be it further enacted, That in all copies of accounts and schedules whatsoever issued from any office at the equity side of the said court, the charge or fee whereupon is or are or shall or may be lawfully computed according to the contents, all sums of money, and dates of the year and days of the month, and numbers, shall be expressed in figures, and shall be charged as if the same were expressed in figures and not in words, in manner and according to the directions following; (that is to say), one pound, or any number of pounds, shall be charged as one word; one shilling, or any number of shillings, shall be charged as one word; one or more penny or pence, whether with or without any fraction of a penny, shall be charged as one word; every fraction of a penny not joined with any penny or pence shall be charged as one word, whether the same shall occur singly or shall be combined in any mode or form whatsoever; and any definite number whatever shall be charged as one word and no more.

Charge of Fees shall be endorsed on all Copies and Documents.

XVII. And be it further enacted, That upon the back of all copies, engrossments, exemplifications, and writings which shall be issued from any office at the equity side of the said court, or by any officer at the equity side of the said court, there shall be endorsed and written by the said officer, or his sufficient deputy or clerk, the full amount of all office fees charged on such copy, engrossment, exemplification, or writing respectively, and the rate of such fees, and the mode of charge according to which such fees shall be computed, and the number of sheets skins or sides on which such fees shall be charged or calculated; and upon any taxation of costs between party and party, or between attorney and client, such copy, engrossment, exemplification, or writing shall be produced before the taxing officer in all cases where it shall appear to him practicable; and it shall not be lawful for the taxing officer to allow any charge of any solicitor or attorney, with respect to any such document so produced upon which the amount and rates of fees shall not be so endorsed, but that all and every such charge shall be struck out of the bills of such solicitor or attorney by such taxing officer.

Taxing Officers shall examine into Justice of Charges on Bills of Costs.

XVIII. And for the removal of doubts as to the extent of the duty of the taxing officer at the equity side of the said court, be it further enacted, That upon all taxations of bills of costs, whether between party and party or between attorney and client, it shall be the bounden duty of the taxing officer, whether he shall be required so to do or not, and whether any objection shall have been made or not, to examine and ascertain by all reasonable methods, that each and every charge in any bill of costs contained (whether such shall be a fee for counsel, solicitor, or officer of court, or stamp duty, or any other disbursement whatsoever, or any charge for business done by the person charging the same), is the proper charge which, under the circumstances of the case ought to be made; and that upon all such taxation the taxing officer shall determine upon all charges made by any officer of the said Court of Exchequer, and allow all such as shall appear to him made according to the true right of such officer respectively.

Not to prevent Taxing Officer from taxing Bills of Costs for Business done previous to Michaelmas 1823.

XIX. Provided always, and be it further enacted, That nothing in this Act contained shall be construed to prevent the taxing officer of said court from taxing all bills of costs for business done previous to the first day of *Michaelmas* term one thousand eight hundred and twenty-three, according to the rules and regulations by which any bill of costs were taxable at or immediately previous to the day of passing this Act.

No. XXXIII. 4 Geo. IV. c. 70.

Grants to the Office of Chief Remembrancer to cease, the present Deputy shall be appointed Chief Remembrancer.

XX. And whereas the office of chief remembrancer of the said Court of Exchequer is now vested in the Most Honourable *Richard* Marquess *Wellesley* and the Right Honourable *William* Lord *Maryborough*, for and during the life of and for the benefit of the said Marquess *Wellesley*, and the said office has been granted in reversion to *Richard Wellesley* esquire, during his life: And whereas the duties of the said office have heretofore been performed by a deputy, and by certain clerks acting under him, entitled the register, the clerk in register's office, the secondary, and the filazer: And whereas it is expedient that the duties heretofore appertaining to the said office of chief remembrancer should in future be performed by the chief remembrancer, and certain other officers, as herein-after provided; be it therefore enacted, That the grants of the said office of chief remembrancer, heretofore made to the said *Richard* Marquess *Wellesley* and *William* Lord *Maryborough*, and to the said *Richard Wellesley* esquire, shall, from and after the passing of this Act, absolutely cease and determine; and that the said *Richard* Marquess *Wellesley* and *Richard Wellesley* successively, shall receive such compensation as herein-after provided, for the loss by them sustained by reason of this Act: and that *Anthony Richard Blake*, barrister at law, the present deputy chief remembrancer of the said court, shall, from and after the passing of this Act, become and be chief remembrancer of the said court, and shall hold the said office during his good behaviour, and that it shall be his office and duty to receive all such references, on matters of account, and on all other matters and things on the equity side of the said court, and to report thereupon to the said court, as shall be ordered by the said court, and to perform all such other duties heretofore appertaining to the said office of chief remembrancer as have heretofore been performed by the deputy chief remembrancer of the said court for the time being, save as herein-after provided.

Register, Assistant Register, Secondary, and Filazer appointed.

XXI. And be it further enacted, That for the performance of the several duties heretofore appertaining to the said office of chief remembrancer, which have heretofore been performed by the said officers or clerks called the register, the clerk in the register's office, the secondary, and the filazer, there shall be at the equity side of the said court a register, an assistant register, a filazer and a secondary; and that *Francis Harrison Biddulph*, the person at present performing the duties of register in the said chief remembrancer's department, shall be the register at the equity side of the said court; and that *George James Baldwin*, the person at present performing the duties of clerk in the register's office in the said department, shall be the assistant register; and that *James Cathrew*, the person at present performing the duties of secondary in the same department, shall be the secondary at the equity side of the same court; and that *Richard Eames*, the person at present performing the duties of deputy filazer in the said department, shall be the filazer at the equity side of the said court; and that the said several officers shall hold their said several offices during good behaviour, and shall perform the several duties mentioned and allotted to them respectively in the tables to this Act annexed.

Duties of Chief Remembrancer.

XXII. Provided always, and be it further enacted, That the said chief remembrancer shall at all times superintend the conduct and proceedings of the several officers at the equity side of the said court, and shall inspect their several and respective offices, and all records, books, accounts, papers, and documents therein respectively, and shall hear and receive all complaints which may be made to him of or concerning any neglect delay or misconduct in any of the said offices respectively, and shall inquire into the same, and shall admonish such officers respectively, when he shall find reason so to do; and in any case which he shall deem of sufficient importance, shall report the facts specially to the court; and it is hereby declared to be the duty of all the subordinate officers, and their clerks, to submit themselves quietly and respectfully to such superintendence and admonition as aforesaid.

Documents to be signed by the Officers issuing them.

XXIII. Provided also, and be it enacted, That from and after the com-

mencement of this Act, it shall not be necessary for the chief remembrancer to sign or attest any document whatever, issuing from the office of the register, assistant register, secondary, or filazer, or any or either of them, but that every such document shall be signed or attested by the officer issuing the same.

On Vacancy of the Office of Chief Remembrancer, His Majesty may grant the same to any practising Barrister of 10 Years' standing: Register, Assistant Secondary, and Filazer to be appointed by His Majesty.

XXIV. And be it further enacted, That upon the said office of chief remembrancer becoming vacant at any future time, it shall be lawful for His Majesty, his heirs and successors, by any letters patent under the Great Seal of *Ireland*, to grant the said office of chief remembrancer of the said Court of Exchequer in *Ireland*, unto any person being a practising barrister at law, of ten years standing at the least, and who shall during that period have actually practised as such in some one of His Majesty's Courts at *Dublin* or *Westminster*, to hold the said office during his good behaviour; and that upon any of the said offices of register, assistant register, secondary, or filazer becoming vacant at any future time, it shall be lawful for His Majesty, by letters patent under the Great Seal of *Ireland*, to appoint a proper person to such office, to hold the same during his good behaviour.

Compensation to be made for the present Grant of the Office of Chief Remembrancer to be ascertained on the average Amount of the Salary, Fees, &c. for Seven Years, &c.

XXV. And in order to ascertain the amount of the annual compensation which ought to be made to the said Marquess *Wellesley* during his life, and to the said *Richard Wellesley* in remainder during his life, for the loss sustained by them by reason of this Act; be it further enacted, That the Chief Justice of His Majesty's Court of King's Bench in *Ireland* for the time being, the Master of the Rolls in *Ireland* for the time being, and the Chief Justice of the Court of Common Pleas in *Ireland* for the time being, or any two of them, shall, upon the application of the said Marquess *Wellesley* and *Richard Wellesley* respectively, or of the said Marquess *Wellesley* or *Richard Wellesley* alone, make inquiry into and ascertain the average annual amount of the salary fees and emoluments of or appertaining to the said office of chief remembrancer for the seven years ending the first of *January* one thousand eight hundred and twenty-two, excluding therefrom all such emoluments and fees as shall appear to have arisen from any new fees, or from any increase of fees introduced by or subsequently to the appointment of the present holders of the said office, or to have arisen from computing the contents of office sheets at seventy-two words instead of ninety words each, or from any other fees which may have been demanded or received contrary to the provisions of any Act of Parliament, or otherwise contrary to law; and for those purposes it shall be lawful for the said Chief Justice of the Court of King's Bench, the said Master of the Rolls, and the said Chief Justice of the Common Pleas, or any two of them, and he or they are hereby authorized empowered and required, by all such ways or means as to him and them shall seem fit and proper, to ascertain the same, and to examine such persons or witnesses as they shall think proper to require, together with all such accounts books and vouchers as they shall call for, and they shall thereupon certify under their hands and seals, or under the hands and seals of two of them, the average amount of the yearly income of the said office so reduced by the exclusion of such emoluments and income as aforesaid, for the said period of seven years, distinguishing the gross income from the net income, and stating the particulars of the disbursements out of the gross income, which constitute the difference between the gross and the net income, so far as they can ascertain the same; and the said certificate shall contain a statement of the particular fees profits and emoluments on which such averages shall have been taken as aforesaid, and also of the fees profits and emoluments heretofore received, which shall be excluded from such averages; and the said certificate shall be filed in the office of the auditor-general in *Dublin* Castle, and shall remain there as a record, and a copy thereof shall be transmitted to the Lord Lieutenant or other chief governor or governors of *Ireland*, who shall cause copies of the same to be laid before both Houses of Parliament, immediately after the commencement of the then next session of Parliament, and the said certificate shall be final and conclu-

Average Amount to be certified.

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sive from and after the last day of such session of Parliament, unless Parliament shall otherwise provide: Provided always, that from and after the filing of the said certificate, there shall be issued and paid to the said Marquess *Wellesley* or his assigns during his life, and after his decease to the said *Richard Wellesley*, and his assigns during his life, yearly and every year, out of and charged upon the Consolidated Fund of *Great Britain* and *Ireland*, after payment of all sums previously charged upon the same fund (unless Parliament shall otherwise provide), a sum equal to the sum which shall be so ascertained by such certificate to be the net annual average amount of the income and emoluments of the said office of chief remembrancer, in full compensation for the same; such annual sum to be paid and payable by four quarterly payments in each and every year, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof to be made on the first of the said days as shall first happen after the passing of this Act, are in proportion only to the time which shall immediately next happen after the passing of this Act, and also such proportion of any such quarterly payment, as at the times of the decease of the said Marquess *Wellesley* or *Richard Wellesley* shall be due from the quarter day next preceding the time of such decease.

After filing of Certificate, the Annual Amount of Average shall be issued out of the Consolidated Fund.

XXVI. And whereas some delay may occur in ascertaining the amount of the annual income of the said office of chief remembrancer, and procuring such certificate as herein-before directed; be it therefore enacted, That in the meantime and until such certificate shall be obtained and filed as aforesaid, it shall and may be lawful for the Commissioners of His Majesty's Treasury to order that there shall be issued and be paid and payable to the said *Richard* Marquess *Wellesley*, and his assigns, and in the event of the death of the said Marquess, to the said *Richard Wellesley* and his assigns, such annual sum or sums of money on account of the compensation to be thereafter awarded to said chief remembrancer as to them shall appear to be just and reasonable, but not exceeding the net average amount of the income and emoluments of the said office, as reported by the Commissioners appointed to inquire into the duties salaries and emoluments of the officers clerks and ministers of justice in all temporal and ecclesiastical courts in *Ireland*, for three years, ending the first day of *January* one thousand eight hundred and twenty; such annual sum to be paid and payable to the said *Richard* Marquess *Wellesley* and his assigns, or in the event of his death, to the said *Richard Wellesley* or his assigns, by four quarterly payments in each and every year, free and clear of all taxes and deductions whatsoever, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof on account as aforesaid, to be made on the first of said days which shall next happen after the commencement of this Act, and in proportion to the time which shall immediately next happen after the commencement of this Act; such payment (if any) to be credited on the foot of such annual income as it shall appear by said certificate, when filed as aforesaid, that said *Richard* Marquess *Wellesley* or *Richard Wellesley* is entitled to; and in case the sum or sums so to be paid as aforesaid shall exceed the sum to which they or either of them shall appear by said certificate to be entitled to, then and in such case such excess or overplus shall be deducted from the quarterly payment which shall next happen after the filing of said certificate.

Until Certificate can be obtained and filed, the Treasury to order such Sum to be issued on Account of the Compensation to be awarded to the Chief Remembrancer as shall appear just.

XXVII. And whereas the said Commissioners so appointed as aforesaid have recommended that the duty of taxation at the equity side of the said Court of Exchequer should cease to be performed by the chief remembrancer of the said court, and that the said chief remembrancer should receive certain stated fees for the performance of his remaining duties, and that the duty of taxation should in future be performed by a distinct taxing officer, to be appointed for that purpose, and that such taxing officer should be paid by a salary, and not by fees; but it is deemed more expedient that the said duty of taxation should continue to be performed as heretofore by the chief remembrancer, and that in lieu

A Salary of 3,000*l.* per Ann. to the Chief Remembrancer and Fees abolished.

of the fees recommended for him by the said Commissioners, and also in lieu of all fees heretofore payable to him, for or in respect of the said duty of taxation, or for or in respect of any other duty appertaining to the said office of chief remembrancer of the said court, the said chief remembrancer shall receive a clear salary of three thousand pounds *per annum*; be it therefore enacted, That from and after the first day of *August* next it shall not be lawful for the chief remembrancer of the said court to have, take, or receive, or to ask, demand, or require, any fee, reward, emolument, or sum of money whatsoever, from any suitor of the said Court of Exchequer, or from any solicitor or attorney, or other person whomsoever, acting on behalf of any suitor of the said court, for any matter or thing done or performed, or required to be done or performed by any such chief remembrancer in the execution of his duty as such, either in cases where such chief remembrancer has heretofore received or been entitled to any fees, or in any other case whatever, any law usage or custom to the contrary in anywise notwithstanding; but all such fees rewards and emoluments shall, from and after the first day of *August* next, entirely cease and determine.

The above Sum to be issued out of the Consolidated Fund by Quarterly Payments.

XXVIII. And be it further enacted, That from and after the commencement of this Act there shall be issued, and paid and payable during his good behaviour, to the said chief remembrancer of the said court for the time being, out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of such Consolidated Fund, but with preference to all other payments which shall or may be hereafter charged upon or payable out of the said fund, the annual sum of three thousand pounds *Irish* currency; every such annual sum to be issued in pursuance of this Act shall from time to time from thenceforth be payable and paid quarterly, free and clear from all taxes and deductions whatsoever, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, the first payment thereof to be made on the first of the said quarterly days which shall immediately next follow the commencement of this Act, and in proportion only to the time which shall have then elapsed from the commencement of this Act.

When any Chief Remembrancer shall resign, &c., in the Course of a Quarter, a proportionate Part of his Salary shall be allowed.

XXIX. Provided always, and be it further enacted, That whenever any person holding or who shall hold the office of chief remembrancer in *Ireland* shall, during the course of any quarter, resign or quit his said office, or shall die, then the person so resigning or quitting, or the executors or administrators of such person so dying (as the case may be), shall be entitled to such proportionate part of such salary as shall have accrued during such part of the said quarter as such person shall have executed the said office; and every chief remembrancer to be hereafter appointed shall, on the quarter-day next after his appointment, be entitled to have and receive out of the said Consolidated Fund such proportion of such salary as shall have arisen from the date of the letters patent of his appointment.

In Business before the Chief Remembrancer, Summonses shall continue to be issued.

XXX. And be it further enacted, That in all references or matters before the said chief remembrancer, in which it has been heretofore customary to issue summonses for the parties to attend, the said chief remembrancer shall continue to issue summonses from time to time, and shall not in any case or under any pretence whatever proceed on any such reference or matter, unless a summons for the meeting at which such proceeding shall be required shall have been signed by him, and shall be produced before him at the meeting for proceeding on such reference or matter.

In Meetings before the Chief Remembrancer, he shall indorse on the Summons his Order as to Costs, which shall be produced to the Taxing Officer.

XXXI. And whereas delays and adjournments of meetings on references and proceedings in the said office of chief remembrancer frequently take place for the accommodation and convenience, or through the negligence and non-attendance of one of the parties concerned in such reference or proceeding; and it is unreasonable and unjust that the party

No. XXXIII. 4 Geo. IV. c. 70.

attending and prepared to proceed should pay the expence of meetings so rendered nugatory by the non-attendance of the opposite party, even though the party so attending should, by a final decree or otherwise, be ordered to pay the several costs of the cause; be it therefore enacted, That at any and every meeting which shall be had before the said chief remembrancer upon any summons issued in manner aforesaid, he shall on the back of the summons for such meeting, to be produced to him according to the directions of this Act, indorse or cause to be indorsed, and shall sign such order, as under the circumstances of the case shall to him seem fit, as to the payment of the costs of such meeting, and as to the person or persons by whom the costs of such meeting shall be paid, as between party or party, or whether such costs shall abide the rule order or decree as to the payment of costs, which may be made on the hearing of the cause, or whether such costs shall be paid by the complainant or defendant, or other party in the cause or matter, independent of any general order or decree which may be pronounced by the court as to the general costs of such cause or matter, or whether, as between solicitor and client, the costs of such meeting in the said office, so as aforesaid rendered nugatory, shall constitute a fair and reasonable charge against the client; and every such summons, with such order so thereon indorsed, and signed by the said chief remembrancer, shall, on the taxation of such costs, be produced to the taxing officer when taxing such costs, who shall allow or disallow the costs in respect thereof accordingly, either as between party and party, or as between solicitor and client, or otherwise, according to the order so as aforesaid indorsed on the back of such summons; and in no case shall the officer, upon the taxation of any bill of costs, allow any sum or sums as and for the expences of any such meeting or proceeding, unless the summons on which meeting was had be produced before such officer at the time of such taxation.

Nothing to prevent the Chief Remembrancer, &c. from taking Fees for Business done previous to Aug. 1.

XXXII. Provided always, and be it further enacted, That nothing in this Act shall extend to prevent the said chief remembrancer, or any other officer at the equity side of the said Court of Exchequer from taking or receiving or recovering all such fees as shall be legally and *bonâ fide* due to any such officer, for any business done or for any services performed in the execution of the duty of his office at any time previous to the first day of *August* next.

Two Chief Examiners instead of Four to do the Duty.

XXXIII. And whereas there are at present four examiners at the equity side of the said Court of Exchequer; be it enacted, That from and after the commencement of this Act, there shall be but two chief examiners at the equity side of the said court, who shall perform the several duties mentioned and specified for them in the tables in that behalf hereto annexed; and that the said two examiners shall be appointed by the chief baron of the said court by deed, to be by him duly executed and enrolled in the said court.

Appointment to be made from the present Examiners.

XXXIV. And be it further enacted, That the two first examiners to be appointed under the provisions of this Act shall be appointed from among the four present examiners of the said court.

Court to report to the Lord Lieutenant what Compensation should be made to the Two Examiners not appointed to act.

XXXV. And be it further enacted, That the said court shall report to the Lord Lieutenant or other chief governor or governors of *Ireland* for the time being, whether in their opinion any and what compensation ought to be made to the two examiners of the said court, who shall not be so appointed, or either of them, or to any present officer or officers at the equity side of the said court, and on what ground, for any loss which may be sustained by such officer or officers in consequence of this Act, or the provisions therein contained, a copy of which report shall be laid before both Houses of Parliament immediately after the commencement of the then next sessions of Parliament.

Officers to execute the Duty in Person, except in Case of Sickness, &c.

XXXVI. And be it further enacted, That from and after the commencement of this Act, the said chief remembrancer, and every other officer of the equity side of the Court of Exchequer, shall respectively execute the duty of his office in person, except only in case of sickness, or necessary

absence; and that in any such case it shall and may be lawful to and for such chief remembrancer or other officer, by deputation in writing under his hand and seal, by and with the consent in writing of the chief baron, or in his absence then of the next senior baron of the said court then in *Dublin*, to appoint a deputy to execute the duties of such chief remembrancer or other officer during such period as shall be specified in such deputation; and the name of such deputy, and also the occasion for appointing him, and the approbation of such chief or other baron, and the time for which such appointment is to continue, shall be specified and set forth in such deputation; and such deputation shall be signed or indorsed by such chief or other baron; and the period mentioned in such deputation may be prolonged if necessary by such officer, with the approbation of such chief or other baron, by the indorsement of the said officer, and of the said chief or other baron, upon such deputation.

Deputies to be appointed.

XXXVII. And be it enacted, That from and after the commencement of this Act, it shall and may be lawful for the several officers herein-after named, and the said officers are hereby fully authorized empowered and directed to take affidavits or affirmations, answers, examinations or other matters whatever, to be put in on oath in the equity side of the said Court of Exchequer, and relating to the business thereof, and to administer the necessary oaths and affirmations for that purpose; that is to say, the chief remembrancer, the register, the secondary, and the filacer; and all such answers, oaths, affidavits or affirmations, shall be of the same force validity and effect, and shall and may be filed used and acted upon respectively, as fully and effectually to all intents and purposes whatsoever, as if the same had been sworn or affirmed before the said court, or all or any of the barons thereof.

Chief Remembrancer, Register, Secondary, and Filacer empowered to take Affidavits, &c.

XXXVIII. And be it further enacted, That it shall and may be lawful for His Majesty, his heirs and successors, by letters patent under the Great Seal of *Ireland*, to give and grant unto any person who may or shall have executed the office of chief remembrancer of the said court for the term of twenty years, or to any person having executed the said office for any shorter period not less than ten years, or who shall, after his appointment to any such office, have become afflicted with any permanent infirmity, disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or yearly sum of money, not exceeding the sum of one thousand five hundred pounds *Irish* currency, in case he shall have served in such office twenty years, and not exceeding one thousand pounds in case he shall have served for such shorter period; and an annuity, not exceeding two thousand pounds, in case he shall have served in such office twenty-five years; and an annuity, not exceeding two thousand five hundred pounds, in case he shall have served in such office for thirty years or more; in which letters patent the cause or ground for making thereof shall be distinctly stated and specified; and the annuity or yearly sum so granted shall be paid accordingly out of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, by even and equal quarterly payments, on the fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* in every year, from the period of which he shall resign his said office, for and during the term of his natural life, without any deduction for fees or poundage, or otherwise.

His Majesty empowered to allow the Chief Remembrancer an Annuity after a Length of Service, &c.

XXXIX. Provided always, and be it further enacted, That no allowance shall in any case be made under this Act to any chief remembrancer, by way of retired salary or pension, unless such chief remembrancer shall have served in the same office during the full term of ten years.

No retired Allowance to be made to Chief Remembrancer unless he has served Ten Years.

XL. Provided nevertheless, and be it further enacted, That every such chief remembrancer, being desirous to resign his office, shall, before he resigns, take and subscribe the following oath before the chief or some other baron of the said court:

'I *A. B.* do solemnly swear, That I neither have received nor will receive directly or indirectly, by myself or by any one in trust for me, 'any sum or sums of money, gift, promise or engagement, as a con-

Before the Resignation of Chief Remembrancer, he shall take the following Oath.

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'sideration inducement or reward for my resignation of the office of chief 'remembrancer of His Majesty's Court of Exchequer in *Ireland*.

'So help me GOD.'

Court may remove any Officer (except the Chief Remembrancer) for Misconduct.

XLI. And be it further enacted, That it shall and may be lawful to and for the said Court of Exchequer, upon complaint duly made, and after full inquiry into the alleged grounds thereof, by affidavit or otherwise, as the said court shall think fit, to remove any officer of the said court, except the chief remembrancer of the said court, from his office, for any offence or misconduct therein which such court shall deem deserving of such punishment, and thereupon such officer shall cease to hold or be entitled to such office.

When an Examination of Witnesses is necessary to be taken before the Chief Remembrancer, the Court may order him to appoint a Person for that Purpose, who shall be under the Controul of the Court.

XLII. And whereas several abuses and inconveniences to the suitors had arisen from the practice of the said court relative to the examination of witnesses under commissions issuing out of the said court to Commissioners for that purpose, and it is expedient that all such abuses and inconveniences should be corrected and a better system introduced; be it therefore enacted, That from and after the commencement of this Act, in all cases where it may be necessary that an examination of witnesses should take place, either in chief in any cause, or in aid of any inquiry or account ordered or directed to be made or taken before the chief remembrancer of the said court, other than the examinations of witnesses before the examinators of the said court, an order shall be made by the said court for referring it to the said chief remembrancer of the said court, according to the usual practice of the said court in such case, to approve of and appoint one fit and proper person to act as examiner in all such cases so referred; and such person so to be approved of and appointed by such chief remembrancer shall, so far as the same is practicable, be totally unconnected with either or any of the parties interested in such cause; and such person so approved of and appointed shall be, and shall be taken as, and shall be considered to be an officer of the said Court of Exchequer, and shall be subject to such summary interference and controul of the said court as any other officer of the said court in this Act particularly mentioned; and a commission shall issue to such person so as aforesaid appointed, authorizing and empowering him to proceed in the examination of all such witnesses as may be necessary, in the same manner and according to the same forms as are at present established (save and except in cases where such established practice is altered by this Act) touching and concerning the examination of witnesses under commissions to examine witnesses issuing out of the Court of Exchequer in *Ireland* at any time before the commencement of this Act; and every person so approved of and appointed a Commissioner to examine witnesses under the provisions of this Act, before he shall exercise any of the duties of such Commissioner, shall take and subscribe, before the chief or other baron of the said court, or other person duly authorized to administer the same, the following oath; and such oath shall be annexed to the said commission, and shall be returned with the said commission to the said court, to be there filed and recorded; (that is to say,)

The Person appointed Examiner of Witnesses shall take the following Oath.

Oath.

'I *A. B.* do swear, That I will, according to the best of my skill and 'knowledge, truly and faithfully perform the duty of a Commissioner 'to examine witnesses pursuant to the powers vested in me by the annexed commission; and that I will truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down 'the examinations and depositions of all and every witness and witnesses 'who shall be produced before and examined by me upon the interrogatories filed for that purpose; and that until publication in the said cause 'shall duly pass, I will not publish disclose or make known any part of 'the purport or contents of any deposition of any witness to be taken by 'me; and further, that I will fairly and truly enter and set down in 'writing, in the dominical of such examination, the hours of the day, on 'each day that I shall be employed as such Commissioner, at which I 'shall respectively commence and conclude the examination of the witnesses under such commission, as also the real and true cause or causes 'of my not commencing such examination at or before eleven of the

'clock in the forenoon, if such should be the case, and also of my not 'continuing such examination till three o'clock in the afternoon, if such 'should be the case, as also by whose delay or default, so far as I can 'judge, such examination was not commenced and continued *(as the case 'may be)* from eleven o'clock in the forenoon till three in the afternoon.

'So help me GOD.'

No Witness residing more than 30 Miles from Dublin obliged to leave his House.

XLIII. And be it further enacted, That no witness who shall reside more than thirty miles from the city of *Dublin* shall in any case be obliged to leave his or her house in order to be examined before any chief examiner or assistant, or examiner to the chief remembrancer; but that all such witnesses who shall reside or be in *Ireland*, and more than thirty miles from the city of *Dublin*, shall and may be examined before a Commissioner so to be appointed, unless such witness, and also the party producing such witness, shall choose that he or they should be examined in *Dublin* before one of the chief examiners, or before the clerk or examiner appointed by the chief remembrancer to examine in aid of inquiries or accounts to be taken before him; and it shall be lawful for every such Commissioner to cross-examine any witness produced before him, in case he shall be required so to do by any person against whom the direct examinations of such witnesses shall have been taken: and it shall be lawful for every Commissioner so to be appointed to receive such fees and allowances for the execution of his duty in the examination of witnesses, and for the expences of such Commissioner in travelling, and they shall respectively be subject to such other rules and regulations as shall be for that purpose from time to time authorized directed and made by any order or orders of the said Court of Exchequer.

Such Witnesses to be examined by a Commissioner, &c.

No Examiner to appoint a Deputy unless approved of by the Court, &c.

XLIV. And be it enacted, That no such examiner shall in any case appoint a deputy, unless and until the occasion for such appointment, and also the person to be appointed, shall have been approved of by the court, upon a petition verified by affidavit; and that nothing shall be considered by the court as a fit occasion for such appointment, but inability in the principal to attend, either from sickness or from unavoidable business; and such order shall be regularly entered in the registrar's office; and no such appointment shall continue for any longer time than shall be allowed or directed by such order, either by fixing a precise time, or by some general words, or by reference to some matter capable of being distinctly ascertained, or in such other manner as the court shall think proper; and if any such appointment shall be made otherwise than as aforesaid, or for any longer period than as aforesaid, then and in every such case such chief examiner making such appointment, and also such deputy, if he shall presume to act therein, shall be deemed guilty of a contempt of the court, and be punished accordingly.

Examiner to take down Examination himself.

Clerks having Access to Depositions to take the following Oath.

XLV. And be it further enacted, That every examiner deputy examiner and commission examiner, shall take down the depositions of all witnesses, on their examination, with his own hand, and that no clerk shall be present at any such examination; and that every clerk who shall be employed before publication, so as to have any access to any deposition or depositions, shall, before he shall act in the execution of such office, and he is hereby required to take and subscribe the following oath before the examiner by whom such clerk shall respectively be so employed; such examiners, deputy examiner, and commission examiner, is hereby empowered and required to administer the said oath.

Oath.

'I *C. D.* do swear, That according to the best of my skill and know-'ledge, I will truly and faithfully execute and exercise the office of a 'copying clerk in the office of *A. B.*, one of the examiners of His Ma-'jesty's Court of Exchequer in *Ireland*, whereunto I am admitted, so 'long as I shall continue to hold the said office; and that I will also well 'and faithfully preserve and keep such of the King's records wherewith 'I shall be entrusted, or whereunto I shall have access, and that I will 'not publish disclose or make known to any person or persons whatso-'ever, the particulars, or the purport or contents of any deposition or de-'positions copied or read by me in the execution of my said office, or to

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'which shall have access thereby, until publication thereof respectively 'shall duly pass. 'So help me GOD.'

Chief Remembrancer empowered to appoint Clerks and Examiners who shall be enrolled in Court.

XLVI. And whereas it is expedient that provision should be made for the examination of witnesses in aid of the statement of accounts or other inquiries depending before the chief remembrancer in the Court of Exchequer respectively, under any orders or decrees of the said court, and that such examination should be had before the said chief remembrancer or his clerk or examiner respectively; be it therefore enacted, That it shall and may be lawful to and for the chief remembrancer of the said court to appoint, by instrument under hand and seal, any person whom he shall think proper to be his clerk and examiner during his pleasure; and such instrument being enrolled in the said Court of Exchequer, such person shall be such assistant and examiner accordingly, and shall as such be an officer of the said court; and that from and after the commencement of this Act, no person shall be, or be deemed or taken or considered to be, to any purpose whatsoever, the clerk and examiner of the said chief remembrancer, but under and by virtue of such appointment so enrolled.

Clerks and Examiners to take the following Oath.

XLVII. And be it further enacted, That every such clerk and examiner of the chief remembrancer, before he shall act as such in the examination of any witness, shall take the following oath before the chief remembrancer by whom he shall be appointed, or before any baron of the said court.

Oath.

'I *A. B.* do swear, That I will, according to the best of my skill and 'knowledge, truly and faithfully execute and exercise the office of 'clerk and examiner of His Majesty's Court of Exchequer in *Ireland*, so 'long as I shall continue to hold the said office; and that I will well and 'faithfully preserve and keep all such records, interrogatories, depositions, 'deeds, documents, and instruments whatsoever, wherewith I shall be 'entrusted, or whereto I shall have access under or by virtue of my said 'office; and that I will not publish disclose or make known to any per-'son whatsoever, the particulars purport or contents of any deposition or 'depositions taken copied or read by me in the execution of my said 'office, or to which I shall have access thereby, until publication thereof 'respectively shall duly pass. 'So help me GOD.'

Where any Examination shall be directed by the Court, the Chief Remembrancer, &c. may, without any Commission, examine Witnesses, and take down Depositions.

XLVIII. And be it further enacted, That in all cases where an examination shall be directed by the said Court of Exchequer, upon under or in aid of any account inquiry or other matter whatsoever, which shall at any time be depending before the chief remembrancer of the said court, it shall and may be lawful to and for such chief remembrancer, if he shall think proper, and if he shall not so think proper, then to and for such his clerk and examiner, if such chief remembrancer shall think fit, without any commission whatsoever, to examine all witnesses who shall be produced before him touching any matter as to which such examination of witnesses shall have been so directed, or arising thereout, and to take down in writing the depositions of all such witnesses in the manner and form usual in such cases.

Chief Remembrancer not to accept of any Consideration for Appointment to the Offices of Clerk or Examiner.

XLIX. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any chief remembrancer of the said court to accept of any sum of money or security for money, or to stipulate for or receive any share or proportion of the profits of the said offices or receive any other valuable consideration whatsoever, as and for a consideration for the appointment of any person whatsoever to the office or place of clerk or examiner to said chief remembrancer.

There shall be paid out of the Consolidated Fund yearly 500*l.* Irish, viz. 400*l.* to the Accountant-General, and to his Clerk 100*l.*, to be paid quarterly.

L. And be it further enacted, That from and after the commencement of this Act there shall be issued and paid and payable out of and charged and chargeable upon the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*, (after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of the said Consolidated Fund, but with preference to all other payments which shall or may be hereafter

charged upon or payable out of the said fund), the annual sum of five hundred pounds *Irish* currency; and which sum of money so to be issued shall from time to time be applied in payment of the following sums; that is to say, to the accountant-general of the said court the annual sum of four hundred pounds for and in lieu of any salary to which he is by law entitled; and to his clerk the sum of one hundred pounds; which salaries shall commence from the first of *August* next, and shall be payable by equal quarterly payments, free and clear of all deductions whatsoever for pells poundage or otherwise, on the twenty-ninth day of *September*, twenty-fifth day of *December*, twenty-fifth day of *March*, and twenty-fourth day of *June* in every year.

Accountant-General allowed certain Fees for Copies of Accounts.

LI. And be it further enacted, That from and after the commencement of this Act it shall and may be lawful for the said accountant-general, by himself or his clerks, to ask demand and receive for all copies of all accounts extracted from the books of the said accountant-general the sum of twopence for every line on the debtor side of such account, and the like sum of twopence for every line on the creditor side of such account, if the said account shall consist of forty lines, or any less number, on each side of the said account; and if the said account shall consist of any greater number of lines than forty on each side of the said account, then the sum of one pound and no more; and that from and after the commencement of this Act it shall not be lawful for the said accountant-general or any clerk or other person in his office to ask demand or receive any fee for any certificate of any balance of stock or cash on any account in the books of the said accountant-general, nor for any other business matter or thing whatsoever in or relating to the office of the said accountant-general; and if any clerk or other person belonging to or employed in, or who shall hereafter belong to or be employed in the office of such accountant-general, shall take any other fee or reward on account of any business matter or thing whatsoever in or relating to the office of accountant-general, or do the duty of any clerk therein, every such person shall be deemed guilty of extortion, and shall and may be prosecuted for the same by indictment or information; or upon complaint thereof made to the said Court of Exchequer shall be punished for the same as for a contempt of the said court, and shall forfeit the sum of fifty pounds.

No Fee for Certificates of Balances or other Business in the Accountant-General's Office.

Penalty 50*l.*

Court may appoint a Broker for Sales and Purchases of Stock.

LII. And be it further enacted, That it shall and may be lawful to and for the said Court of Exchequer from time to time, at their will and pleasure, to appoint a broker or brokers by whom all sales and purchases of stock with the privity of the accountant-general of the said court shall be made, and to remove such broker or brokers at their will and pleasure; and such broker shall be entitled to receive the usual commission of brokerage on any such sale and purchase; and whenever such commission or brokerage shall amount to one guinea or any greater sum, then and in any such case such broker shall thereout pay the stamp duty of half-a-guinea to be charged on the approbation of such sale or purchase by the chief remembrancer.

Office of Clerk of the Reports abolished.

LIII. And be it further enacted, That from and after the commencement of this Act, the office of clerk of the reports of the said Court of Exchequer shall be and the same is hereby abolished; and that all matters and things which are now by law required to be done and performed by the clerk of the reports in the said court, shall be done and performed by the registrar at the equity side of the said court; any law usage or custom to the contrary in anywise notwithstanding.

Nothing herein shall defeat any Action against any Officer of the Court for Misconduct in Office.

LIV. Provided always and be it enacted, That nothing in this Act contained shall extend or be construed to extend to limit, abridge, bar, prejudice, or defeat any action or indictment, or any remedy or proceeding whatsoever, which at any time heretofore may or might have been brought, found, had, or taken against any officer deputy or clerk in or under the said court, of for or in respect of any misconduct in office which may have accrued or taken place, or which may take place at any time before the commencement of this Act; but that all such actions,

No. XXXIII. 4 Geo. IV. c. 70.

indictments, remedies, and proceedings for any such misconduct may be brought, found, had, or taken, as if this Act had never been made.

Penalties how to be recovered.

LV. And be it further enacted, That all and every penalties and penalty to be incurred and forfeited in pursuance or by virtue of this Act, or any of the matters herein contained, shall and may be sued for and recovered by any person who will sue for the same by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at the Four Courts *Dublin*, and not elsewhere, in which no essoign protection or wager of law, nor more than one imparlance shall be allowed; and that one moiety of every such penalty shall be for the use of His Majesty his heirs and successors, and one moiety thereof to the use of the person or persons who shall sue for the same.

Commencement of Act.

Act may be altered or repealed this Session.

LVI. And be it further enacted, That this Act and the several provisions therein contained shall commence and take effect from the first day of *August* next, except in such cases where any other period is mentioned for the commencement of any of the provisions thereof.

LVII. And be it further enacted, That this Act may be amended altered or repealed by any Act or Acts to be passed in this present session of Parliament.

TABLES

TO WHICH THIS ACT REFERS.

No. 1.—TABLE OF ALL THE FEES

Which it shall be lawful for the Chief Clerk and Examiner to the Chief Remembrancer of the Court of Exchequer in Ireland, or any other person employed in his office, to demand or accept for or on account of any matter or thing done in or concerning the business of the said office.

	£.	s.	d.
1. For examining and taking down in writing the depositions of the first witness in any cause or matter, in answer to the first interrogatory in each set of interrogatories on which he shall be examined . .	0	3	8
2. For like to every other interrogatory which shall be exhibited at the desire of the party to such witness . .	0	2	2
3. For examining and taking down in writing the deposition of the second and each other witness who shall be examined in such cause or matter, in answer to each interrogatory which shall be exhibited to such witness .	0	2	2
4. For examining a witness when the examiner shall be required to go out of his office for the purpose . . .	1	2	9
5. For each sheet, consisting of seventy-two words, of copies of such depositions and of interrogatories, when required, and attesting same as true copies . . .	0	0	6½
6. For preparing the fair copy or transcript of the draft of each report prepared by the chief remembrancer for his signature, for each sheet containing seventy-two words, reckoning however the year when expressed by figures as one word, and any number of pounds expressed by figures as one word, and the like as to shillings and as to pence	0	0	6½

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	£.	s.	d.
7. For copies of charges, discharges, and all other documents which shall be required from the office of the chief remembrancer or his examiner, for each sheet containing seventy-two words, calculating figures as above expressed	0	0	6½
8. Making search for any papers which have been more than three years in the office, and of which no copy shall be required	0	2	6
9. For any certificate for which no fee is otherwise provided	0	2	6

The above fees shall be apportioned between the said chief clerk and examiner, and any other clerk or clerks in the said office, in such manner as the chief remembrancer shall direct.

No. 2.—TABLE OF ALL THE FEES

Which it shall be lawful for the Register or Assistant Register of the equity side of the Court of Exchequer in Ireland, or any clerk or other person in their employment, to demand or accept for or on account of any act matter or thing done in or concerning the business of the said office; and which shall be apportioned between them in manner following; the said register to receive three-fifths, and the said assistant register to receive the remaining two-fifths of the entire of said several fees.

	£.	s.	d.
1. For drawing entering and signing every order upon debate, if not exceeding one side or sheet containing seventy-two words	0	2	6
2. If it exceeds one side or sheet, for every side or sheet after of seventy-two words each	0	0	10
Any one fraction of a sheet to be charged as an entire sheet, but not more than one fraction to be charged for any one document.			
3. For drawing entering and signing every order upon hearing of a cause	0	6	8
4. If it exceeds one side or sheet of seventy-two words, for every side or sheet of seventy-two words	0	0	10
5. For drawing entering and signing every decretal order	0	12	6
6. If it exceeds one side or sheet of seventy-two words, for every such side or sheet after the first	0	0	10
7. For drawing entering and signing every final dismiss	0	9	2
8. If it exceeds one side or sheet of seventy-two words, for each side or sheet after	0	0	10
9. For enrolling every final decree and every final dismiss, for each roll of ten sheets of seventy-two words each	0	13	4
10. For drawing entering and signing every order upon a petition	0	2	6
11. If it exceed one side or sheet of seventy-two words, for every such side or sheet after	0	0	10
12. For drawing entering and signing every order for an attachment, dedimus, commission to examine witnesses, to rejoin, for an injunction, for publication, to dissolve an injunction, for a Serjeant at Arms, for hearing a cause, duces tecum, or any rule of course, or side bar or attornies rule	0	2	6
No allowance as for a second side to be made for any such.			
13. For entering filing and furnishing atte-ted copies of any report, certificate, exception, account, submission, award, commission of partition, Judge's certificate, or order of the Lords	0	3	6

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		£.	s.	d.
14.	If the copy exceeds one side or sheet of seventy-two words, for every such side or sheet after the first, the year where expressed in the document by figures to be calculated as one word, the number of pounds expressed as one item to be reckoned as one word, and the same as to shillings and pence	0	0	10
15.	For receiving and filing every affidavit, and furnishing copy thereof to the party filing the same, for the first sheet of seventy-two words	0	2	0
16.	Each subsequent sheet	0	0	10
17.	For every copy of notes on hearing	0	6	8
18.	If it exceeds one side or sheet of seventy-two words, for every such side or sheet after	0	0	10

The Register and Assistant Register shall perform all such duties at the equity side of the said court as have heretofore been performed in the Chief Remembrancer's Office by the officers or clerks called the Register and the Clerk in the Register's Office, except that they shall not be charged with the custody of the deposition of witnesses; and they shall also perform any other duty or duties which the court shall require of them as duties which ought to appertain to the office of Register of said court; and the Register and Assistant Register shall each keep a clerk, to be approved of by the Chief Remembrancer, who shall fix the salaries of such clerks respectively.

No. 3.—TABLE OF ALL THE FEES

Which it shall be lawful for the Secondary at the equity side of the Court of Exchequer in Ireland, or any clerk or other person in his employment, to demand or accept for or on account of any act matter or thing done in or concerning the business of Secondary of the said court.

		£.	s.	d.
1.	For making out and entering every Writ of Subpœna to answer.	0	0	6
2.	every Subpœna to rejoin, Subpœna to hear judgment, and Subpœna ad Testificandum	0	3	0
3.	every Subpœna for costs	0	5	6
4.	every other Subpœna	0	7	6
5.	every Writ of Dedimus Potestatem to take an answer or answers, or to examine witnesses, Commission to empower arbitrators to examine, Commission of partition or perambulation, and each other Commission which shall issue pursuant to special order	0	7	6
6	every Writ of Attachment whether directed to the Sheriff or Pursuivant, and whether for want of appearance or answer, or pursuant to order of court	0	5	10
7.	every Proclamation of Rebellion, Commission of Rebellion, and Serjeant at Arms, each	0	7	6
8.	every Writ of Sequestration	0	11	4
9.	every Writ of Injunction	0	7	6
10.	every Writ of Scire Facias on a Decree	0	7	6
11.	every Writ of Assistance	0	5	0
12.	every Writ of Extendi Facias or Levari Facias	0	12	0
13.	For entering and filing every recognizance entered into in any cause, and giving certificate of enrolment thereof	0	15	10

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	£.	s.	d.
14. For filing and entering every other recognizance, except Sheriff's recognizance, and every bond to the Crown, each	0	2	0
15. - - - every Sheriff's recognizance, the fee prescribed by statute	0	2	6
16. For preparing and furnishing an attested copy of any recognizance filed in the office, when required	0	6	8
17. For making search for recognizances or Crown Bonds entered into or executed by any particular person, and giving abstracts, if required, of the recognizances or bonds, if any appearing on record entered into by such person, or making search for any particular recognizance, of which a copy shall not be required by the person desiring to have such search made	0	3	4
When a search and certificate is required of a certain recognizance or a Crown Bond being filed or not being filed:			
18. For making such search, and furnishing certificate thereof	0	5	10
19. For a search, and furnishing a negative certificate, as required by the statute with respect to judgments in the Law Courts and recognizances in the Court of Chancery, for recognizances or Crown Bonds entered into or acknowledged by any particular person, and filed in the office, where there shall be no abstract, or but one abstract	0	6	8
20. If there shall be more than one abstract, a further fee for each abstract after the first, of	0	1	0
21. For preparing and entering vacate of recognizance acknowledged in any cause, and giving certificate thereof.	0	6	8
22. For the like of any other recognizance, and for cancelling and giving up Crown Bonds, and filing such consents and other documents as may be necessary to warrant the vacating or cancelling thereof	0	2	0
23. For enrolling indentures of apprenticeship to attornies, as required by the statute, the fee thereby prescribed, of	0	1	0
24. For preparing and issuing every Writ of Scire Facias upon a recognizance or Crown Bond	0	8	8
25. For filing writ and return, and also for filing any pleading founded thereon	0	3	4
26. For entering every rule to plead on proceedings on such recognizances or bonds, and every other rule or order	0	2	0
27. For the copy of every such order when required, be it long or short	0	2	0
28. For enrolling judgment on Scire Facias, for each roll consisting of ten sheets of seventy-two words each.	0	13	4
29. For entering and enrolling every Custodiam, for each roll as above	0	13	4
30. For entering and enrolling every order for a Custodiam, for each roll as above	0	13	4
31. For swearing every officer, except Sheriffs, into office	1	2	9
32. For attending swearing and the passing of every Sheriff's account, and giving constat of debet (the fee allowed by statute)	0	3	4
33. For receiving entering and reading Petitions of Reducement, and entering and making out orders thereon	0	8	6
34. For entering every appearance, besides the fee given by the Stamp Act	0	0	6
35. For filing every pleading necessary to be filed in the said office	0	1	6
36. For attested copies of such pleadings, per sheet of seventy-two words	0	0	6½

	£.	s.	d.
37. For filing every petition affidavit or other document, furnishing a copy thereof to the party filing the same, for the first sheet of seventy-two words	0	2	0
38. For every other sheet of seventy-two words	0	0	10
39. For every search which any person shall require to have made for any record or other document, for which no fee is herein-before provided, searches in the rule books and attachment books for the last three years, or for every document of which, when found, a copy shall be required	0	2	6
40. For every certificate for which no fee is herein-before provided	0	2	6
41. For attending in any court with any record or pleading	0	10	0

The Secondary shall perform all such duties at the equity and revenue sides of the Court of Exchequer, as have heretofore been performed in the Chief Remembrancer's Office by the Secondary or Clerk in the Secondary's Office; and he shall also perform any other duty or duties which the court shall require of him, as duties which ought to appertain to the office of Secondary of said court; and he shall keep a clerk, to be approved of by the Chief Remembrancer, who shall fix the salary of such clerk.

No. 4.—TABLE OF ALL THE FEES

Which it shall be lawful for the Filazer at the equity side of the Court of Exchequer in Ireland, or any clerk or other person in his employment, to demand or accept for or on account of any matter or thing done in or concerning the business of the said office.

	£.	s.	d.
1. For filing and entering every bill, answer, replication, rejoinder, and each other equity pleading	0	1	6
2. For amending bill answer or other pleading, pursuant to order	0	2	6
3. For attested copies of pleadings, for each sheet of seventy-two words	0	0	6½
In cases of schedules annexed to pleadings, the year when expressed by figures to be reckoned as one word, and any number of pounds expressed by figures to be reckoned as one word, and the like as to shillings and as to pence.			
4. For comparing and re-attesting copies of pleadings, when required for the purpose of proof, for every twenty sheets of seventy-two words each which such copy shall contain	0	1	0
5. For every search for pleadings, and taking down, for the inspection of the party requiring same, the document sought for, when found	0	2	6
6. For every other such, save and except searches in the bill books for the preceding ten years	0	2	6
7. For every search for and furnishing certificate of the pleadings filed in any cause, with the period of filing same, and the length thereof; also that any particular pleading has or has not been filed; and also a certificate of the names of parties in any cause, or any other certificate required by any party	0	2	6
8. For receiving and entering any appearance, besides the fee given by Stamp Act	0	0	6
9. For attending in any court with any record or pleading	0	10	0

The Filazer shall perform all such duties at the equity side of the said court as have heretofore been performed in the Chief Remembrancer's Office by the officers or clerks called the Filazer and Deputy Filazer; and

he shall also perform any other duty or duties which the court shall require of him, as duties which ought to appertain to the office of Filazer of said court; and he shall keep a clerk, to be approved of by the Chief Remembrancer, who shall fix the salary of such clerk.

No. 5.—TABLE OF ALL THE FEES

Which it shall be lawful for the Examiners in Chief at the equity side of the Court of Exchequer, or any clerk or other person employed by them or in their offices respectively, to demand or accept for or on account of any act matter or thing done in or concerning the business of the Examiner's Office.

	£.	s.	d.
1. For the first witness examined in a cause, (whether upon one interrogatory or upon several interrogatories) in the Examiner's Office, or by either of the persons holding the situation of Chief Examiner . . .	0	3	8
2. For every other witness examined in like manner in the same cause	0	2	2
3. For the copy of all such depositions as are taken by the Examiners in Chief in person, to be paid by the party lodging the interrogatory or interrogatories, for each sheet of seventy-two words	0	0	10
4. For all other copies of interrogatories and depositions required by any person out of the office, for each sheet of seventy-two words -	0	0	6½
5. For every search within twelve months for any document or documents, of which there shall not be a copy or copies required by the person desiring to have such search made	0	2	6
6. For looking into every term before	0	0	4
7. For every deed or other document which shall be exhibited to a witness on his examination by or before the Examiners in Chief, or either of them, and for certifying the same as having been so exhibited . .	0	2	0
8. For every certificate which the officer shall be required to give	0	2	6
9. For swearing and examining every witness where the officer shall, under the authority of the court, go out of his office for the purpose	0	16	8
If the officer shall be required to go beyond the limits of the Circular Road, Dublin, the charge for such examination to be such as shall be expressed in the order.			
10. For comparing with originals and re-attesting the copies of any depositions which shall be required to be made use of in any Court of Common Law, or on an appeal, for each book or depositions . . .	0	6	8

The Examiners shall perform all such duties at the equity side of the Court of Exchequer as have heretofore been performed by the Examiners to the Chief and other Barons, and shall have the custody of the depositions of all witnesses examined or cross-examined in any matter or cause pending at the equity side of the said court, whether taken before them or any Commissioner or Commissioners appointed under or by virtue of the provisions of this Act, or otherwise; save such depositions as shall be taken upon any reference to the Chief Remembrancer, the said Chief Remembrancer being to have the charge and custody of all depositions so taken.

No. XXXIV. 5 Geo. IV. c. 16.

[No. XXXIV.] 5 George IV. c. 16.—An Act to amend an Act passed in the last Session of Parliament, for the better Administration of Justice in the Equity Side of the Court of Exchequer in *Ireland*.—[23d *March* 1824.]

4 G. 4. c. 61.

WHEREAS by an Act passed in the last session of Parliament, intituled *An Act for the better Administration of Justice in the Equity Side of the Court of Exchequer in* Ireland, it is enacted, That the grants of the office of chief remembrancer of the said court, made to *Richard* Marquess *Wellesley* and *William* Lord *Maryborough*, and to *Richard Wellesley*, shall, from and after the passing of the said Act, absolutely cease and determine; And whereas the office of keeper of the records appertaining to the said office in the said court was also at the time of the passing of the said Act vested in the said *Richard* Marquess *Wellesley* and *William* Lord *Maryborough*, for and during the life of, and for the benefit of the said Marquess *Wellesley*; and the said office had also been granted in reversion to the said *Richard Wellesley*; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the grants of the said office made to the said *Richard* Marquess *Wellesley* and *William* Lord *Maryborough*, and to the said *Richard Wellesley*, shall be deemed and taken to have ceased from the eleventh day of *July* last, being the day of the passing of the said Act; and that the chief remembrancer of the said court for the time being, shall be deemed and taken to have been from the passing of the said Act, and shall henceforth be keeper of the said records, and shall enjoy all privileges authorities and jurisdictions whatsoever to the office of keeper of the said records in any manner belonging or appertaining; save that he shall not be entitled to receive any fee or fees whatever for any Act by him done in virtue of the said office.

Grants of the Office of Keeper of the Records to cease; and the Chief Remembrancer to be Keeper of the Records.

II. And be it further enacted, That the Chief Justice of His Majesty's Court of King's Bench in *Ireland* for the time being, the Master of the Rolls in *Ireland* for the time being, and the Chief Justice of the Court of Common Pleas in *Ireland* for the time being, or any two of them, shall, upon the application of the said Marquess *Wellesley* and *Richard Wellesley*, or either of them, make inquiry into and ascertain the particulars of the salaries fees and emoluments which appertained to the said offices, or either of them, at the time of the passing of the said Act; excluding all fees payable for attendances given by the deputy of the said chief remembrancer, and all fees then received and retained according to the ancient usage of the said offices, or either of them, by any of the subordinate officers or clerks named in the said recited Act as a remuneration for their labours; and also excluding all fees, or addition to fees, which shall (if any) appear to have been introduced by or subsequently to the appointment of the said *Richard* Marquess *Wellesley* and *William* Lord *Maryborough* to the offices aforesaid, or contrary to the provisions of any Act of Parliament, or otherwise contrary to law; and they shall calculate the fees upon office sheets as payable upon sheets of ninety and not seventy-two words; and they shall ascertain the average annual amount of the said salaries fees and emoluments of the said offices for the seven years, ending the first day of *January* one thousand eight hundred and twenty-two, and they shall also make inquiry into and ascertain the average annual amount of the disbursements of the said offices, for or in respect of salaries to any of the said subordinate officers or clerks, coals, candles, stationery, and other incidental expences, necessarily incurred by the deputy for the time being, for the said seven years, ending the first day of *January* one thousand eight hundred and twenty-two; and for those purposes it shall be lawful for the said Chief Justice of the Court of King's Bench, the said Master of the Rolls, and the said Chief Justice of the Common Pleas, or any two of them, and he or they are hereby authorized empowered and required, by all such ways and means as to

Account to be taken of the Fees of both the Officers of Chief Remembrancer and Keeper of the Records by the Chief Justice of the King's Bench, &c. for the Purpose of Compensation.

No. XXXV. 6 Geo. IV. c. 30.

him and them shall seem fit and proper, to ascertain the same, and to examine such persons or witnesses as they shall think proper to require, together with all such accounts books and vouchers as they shall call for; and they shall thereupon certify under their hands and seals, or under the hands and seals of two of them, the average amount of the yearly income of the said offices so reduced by the exclusion of such emoluments and income as aforesaid, for the said period of seven years, distinguishing the gross income from the net income, and stating the particulars of the said disbursements out of the gross income which constitute the difference between the gross and the net income, so far as they can ascertain the same, including in the said net income the produce of all fees which the said Marquess was lawfully entitled to receive at the time of the passing of the said Act, subject only to such exclusions and disbursements as aforesaid; and the said certificate shall contain a statement of the particular fees profits and emoluments on which such averages shall have been taken as aforesaid, and also of the fees profits and emoluments heretofore received which shall be excluded from such averages; and the said certificate shall be filed in the office of the auditor-general in *Dublin* Castle, and shall remain there as a record, and a copy thereof shall be transmitted to the Lord Lieutenant or other chief governor or governors of *Ireland*, who shall cause copies of the same to be laid before both Houses of Parliament, immediately after the commencement of the then next session of Parliament; and the said certificate shall be final and conclusive from and after the last day of such session of Parliament, unless Parliament shall otherwise provide: Provided always, that from and after the filing of the said certificate there shall be issued and paid to the said Marquess *Wellesley*, or his assigns, during his life, and after his decease to the said *Richard Wellesley* and his assigns during his life, yearly and every year, out of and charged upon the consolidated fund of *Great Britain* and *Ireland*, after payment of all sums previously charged upon the same fund (unless Parliament shall otherwise provide), a sum equal to the sum which shall be so ascertained by such certificate to be the net annual average amount of the income and emoluments of the said offices, in full compensation for the same; such annual sum to commence from the eleventh day of *July* last, being the day of the passing of the said Act, and to be paid and payable by four quarterly payments in each and every year, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*; the first payment thereof to be made on the first of the said days as shall first happen after the filing of the said certificate, and in proportion to the time which shall have elapsed from the eleventh day of *July* last, being the day of the passing of the said Act; and also to the executors of the said Marquess *Wellesley* and *Richard Wellesley* such proportion of any such quarterly payment as at the time of the decease of the said Marquess *Wellesley* or *Richard Wellesley* shall be due, from the quarter-day next preceding the time of such decease.

Average Amount to be certified:

After filing of such Certificate, Compensation shall be paid out of the Consolidated Fund, Quarterly.

III. Provided always That so much of the said recited Act as relates to the compensation to be made to the said *Richard* Marquess *Wellesley* and *Richard Wellesley* successively, for the loss of the said separate office of chief remembrancer, shall be and the same is hereby repealed.

Compensation to Marquess Wellesley, &c. under recited Act repealed.

[No. XXXV.] 6 George IV. c. 30.—An Act to amend an Act of the Fourth Year of His present Majesty's Reign, for the better Administration of Justice in the Court of Chancery in *Ireland*.—[10th *June* 1825.]

WHEREAS by an Act passed in the fourth year of the reign of His present Majesty, intituled *An Act for the better Administration of Justice in the Court of Chancery in* Ireland, it was among other things enacted, that it shall be lawful for the several officers and their respective

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deputies and clerks, in of or belonging to the said Court of Chancery, mentioned and described in the tables to the said Act annexed, to ask, demand, have, receive, take and accept the several fees payments and sums of money in the said tables to the said Act annexed respectively mentioned, and none other or greater fees or sums of money whatever, under the regulations and penalties in the said Act mentioned expressed and contained: And whereas the fees payable to the chief examiners of the said court, under the table number six, annexed to the said Act, have proved insufficient for the remuneration of the chief examiners: And whereas it is therefore expedient to adopt the recommendation of the Commissioners of Inquiry into the duties salaries and emoluments of the officers clerks and ministers of justice in all temporal and ecclesiastical courts in *Ireland*, in their first report, in relation to the said offices of chief examiners, by granting to them a salary of three hundred pounds *per annum* each, over and above all fees payable under the said recited Act and the said table thereto annexed, and also in addition to the said recommendation to grant one hundred pounds *per annum* to the sworn assistant clerk of each of the said chief examiners: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act there shall be issued and paid and payable to each of the present two examiners in chief of the said Court of Chancery in *Ireland*, and to such persons as shall from time to time hold the said offices respectively, out of and charged and chargeable upon the consolidated fund of the United Kingdom of *Great Britain* and *Ireland* (after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of such consolidated fund, but with preference to all other payments which shall or may hereafter be charged upon and payable out of the said fund), the annual sum of three hundred pounds *Irish* currency *per annum*, and to the sworn assistant clerk of each of the present or any future examiners in chief, the annual sum of one hundred pounds; the said annual sums so to be issued in pursuance of this Act to be payable and paid quarterly, free and clear of all deductions taxes and charges whatsoever, on the fifth day of *January*, the fifth day of *April*, the fifth day of *July*, and the tenth day of *October* in every year, the first quarterly payment thereof to be made on such of the said days as shall happen next after the passing of this Act: Provided always, that each such sworn assistant clerk shall be appointed by each of the present and of the future examiners in chief of the said court, by instrument in writing under their respective hands and seals, enrolled in the said Court of Chancery.

Additional Salaries to Chief Examiners of 300*l.* per Ann. and 100*l.* to the sworn Assistant Clerk of each, charged on Consolidated Fund.

The Arrears of the said annual Allowances shall be paid from Nov. 3, 1823, to April 5, 1825.

II. And whereas the present examiners in chief of the said court have suffered much loss since the commencement of the said recited Act, by the diminution of their income, in consequence of the provisions of the said Act, and it is therefore just and reasonable that the said salaries to the said examiners and their clerks should and ought to commence and be paid to them from the time of the commencement of the said recited Act; be it therefore enacted, That there shall be paid to *Thomas Quinan* and *Thomas Fenton*, the two present examiners in chief of the said Court of Chancery, out of the said consolidated fund, the arrears of the said several sums of three hundred pounds and one hundred pounds *per annum*, from the third day of *November* one thousand eight hundred and twenty-three, the day on which the said recited Act commenced in its operation, up to the fifth day of *April* one thousand eight hundred and twenty-five, as if the said annual sums had been so charged and made payable to the said examiners in chief by the said recited Act, but only allowing to them the proportion of the quarterly payment from the said third day of *November* one thousand eight hundred and twenty-three to the fifth day of *January* one thousand eight hundred and twenty-four.

Retired Allowance may be granted to Chief Examiners, not exceeding 300*l.* a Year.

III. And be it further enacted, That it shall and may be lawful for

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His Majesty, his heirs and successors, by letters patent under the Great Seal of *Ireland*, to give and grant unto any person who shall have executed the office of an examiner in chief of the said Court of Chancery in *Ireland* for the term of twenty years, or who shall after his appointment to such office have become afflicted with any permanent infirmity, disabling him from the due execution of his said office, and who shall be desirous of resigning such office, and shall accordingly resign the same, an annuity or yearly sum, not exceeding the said sum of three hundred pounds *Irish* currency, during his natural life, in which said letters patent the cause or ground for making thereof shall be distinctly stated and specified, and which said annuity or yearly sum so granted shall be paid accordingly out of the consolidated fund of the United Kingdom of *Great Britain* and *Ireland*, by even and quarterly payments, on every fifth day of *January*, fifth day of *April*, fifth day of *July*, and tenth day of *October* in every year, from the period of such resignation, without any deduction for fees or poundage, the first payment thereof to be apportioned from the day of such resignation to the next ensuing quarter-day.

Proviso, that *T. Quinan*, One of the Chief Examiners, may elect to sell his Office, under 49 G. 3. c. 126. instead of receiving such Retired Allowance.

IV. Provided always, That *Thomas Quinan* esquire, one of the present examiners in chief, shall not be deemed entitled to have such annuity granted to him, if upon his resignation he shall proceed to make sale of his said office, under the provision contained in an Act made in the forty-ninth year of the reign of His late Majesty King *George* the Third, intituled *An Act for the further Prevention of the Sale and Brokerage of Offices;* and it is hereby enacted and declared, that the right of election to make such sale, under the provision of the said last-mentioned Act, or to take and accept the grant of such annuity as aforesaid, under the provision of this Act, shall be in the said *Thomas Quinan*.

Proportion of Salary in case of Resignation or Death of Chief Examiner.

V. Provided always, and be it further enacted, That whenever any person holding or who shall hold or shall have held the office of examiner in chief of the Court of Chancery in *Ireland*, shall during the course of any quarter resign or quit his said office, or shall die, then the person so resigning or quitting, or the executors or administrators of such person so dying (as the case may be) shall be entitled to such proportionate part of such salary or allowance as shall have accrued during such part of the said quarter as such person shall have executed the said office, or shall have been entitled to receive any such salary or allowance; and every examiner in chief who shall be appointed on the vacancy of any such office, shall on the quarter-day next after his appointment be entitled to have and receive out of the consolidated fund such proportion of such salary or allowance as shall have arisen and become due and payable to such officer from the date of his appointment to his said office.

Not to affect *Fees of Examiners previous to* Commencement of Act 4 G. 4. c. 61.

VI. Provided also, and be it enacted, That nothing in this Act or in the said recited Act of the fourth year of His present Majesty's reign, shall be construed deemed or taken to prevent the chief examiners of the said Court of Chancery, or either of them, or his or their deputy or deputies, from claiming taking, or receiving or recovering all such fees as shall be legally and *bonâ fide* due to such chief examiner or his deputy, for any business done or for any service performed in the execution of the duty of his or their respective offices, at any time previous to the commencement of the said recited Act, according to the rate of fees lawfully payable to such examiners previous to the commencement of the said recited Act.

Further Allowance of 200*l.* a Year to the Two present Examiners in Chief, out of the 10,000*l.* set apart by 4 G. 4. c. 61. as a Compensation for their Loss by the said Act, to commence from 3 Nov. 1823.

VII. And whereas the present two examiners in chief of the said Court of Chancery had purchased their offices, as they lawfully might do at the time of their being appointed to such offices, and have relinquished lucrative professions to attend to the duties of the said offices, and have suffered a considerable diminution in their income in consequence of the provisions of the said recited Act of the fourth year of His present Majesty's reign; and inasmuch as from want of sufficient books or vouchers, or other evidence, they cannot proceed with effect to ascertain their title to any compensation, according to the regulations and provisions of the said recited Act; and inasmuch as there are no other officers

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of the same class, according to whose annual income the amount of compensation to the said examiners in chief could be certified, pursuant to the provisions of the said recited Act: And whereas the Lord Chancellor of *Ireland*, who under the said Act would have been required to certify the amount of the said compensation for the said examiners, has recommended it as just and proper that the said *Thomas Quinan* and *Thomas Fenton*, the said present examiners, should, under the circumstances aforesaid, receive as a compensation for such losses during their respective lives, the further annual sum of two hundred pounds each *Irish* currency, and that such compensation or annual sum should commence and be payable from the third day of *November* one thousand eight hundred and twenty-three; be it therefore enacted, That each of them the said two examiners in chief, namely, the said *Thomas Quinan* and *Thomas Fenton*, shall, out of the sum of ten thousand pounds provided by the said recited Act as a fund to compensate the several officers of the Court of Chancery, receive and be paid the clear annual sum of two hundred pounds *Irish* currency respectively, over and above all taxes charges and deductions whatsoever, for and during their respective natural lives, and to be in lieu and full satisfaction of all losses and diminution of income which they have respectively sustained, or may or shall respectively sustain by the provisions of the said recited Act, and that the said respective annual sums of two hundred pounds shall be payable quarterly upon the fifth day of *January*, the fifth day of *April*, the fifth day of *July*, and the tenth day of *October* in every year, and to commence from the third day of *November* one thousand eight hundred and twenty-three, and that the said *Thomas Quinan* and the said *Thomas Fenton* shall receive the arrears of the said annual sums from the said third day of *November* one thousand eight hundred and twenty-three up to the fifth day of *April* one thousand eight hundred and twenty-five, within one calendar month next after the passing of this Act, and shall receive the first quarterly payment of such annual sums on the fifth day of *July* one thousand eight hundred and twenty-five: Provided always, that the proportion only of the said respective sums shall be payable for the space of time from the said third day of *November* one thousand eight hundred and twenty-three up to the fifth day of *January* one thousand eight hundred and twenty-four.

Provisions in 4 G. 4. c. 61. with Reference to Orders of Lord Chancellor and Keeper of the Rolls.

VIII. And whereas by the said recited Act passed in the fourth year of His present Majesty's reign, certain provisions are made for compensation with reference to certain general orders proposed to be adopted by the Lord Chancellor and Master of the Rolls, in manner therein mentioned: And whereas it is by the said recited Act among other things provided and enacted, that the Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland* for the time being, shall from time to time have power, by orders of the said Court of Chancery, to decrease increase or abolish any of the fees in the said Act mentioned, and to direct and authorize the payment of new or additional fees in manner therein provided: And whereas it is also by the said Act provided and enacted, that the Lord Chancellor, Lord Keeper or Commissioners for the custody of the Great Seal for the time being, should have power, by orders of the said Court of Chancery, to alter or discharge any course of proceeding in suits, or to direct such process to issue, and in such manner and course in such suits as shall to them seem fitting and expedient, as if the said recited Act had not passed: And whereas doubts may arise upon the construction of the said Act, whether the Master of the Rolls for the time being should join in such future general orders of the said court for executing the said two last-mentioned provisions of the said Act; for the obviating such doubts, be it therefore enacted, That nothing in the said recited Act contained shall be deemed construed or taken in any manner to abridge prejudice take away or affect such rights jurisdictions or authorities as appertained or belonged in any manner to the said office of Master of the Rolls previous to the passing of the said recited Act, in relation to such future general orders, or in relation to any other matter or thing whatsoever, to which such rights jurisdictions or authorities relate or

Powers to the Lord Chancellor to alter Fees, and to direct Course of Proceedings.

Doubts in the Construction thereof.

Saving for the Rights and Authority of the Master of the Rolls, except as to the Abolition of Fees, the old Salary in the Civil List, and the Substitution of the Salary thereby provided.

appertain, save and except so far as the said recited Act repeals or abolishes a salary theretofore charged on the civil list and consolidated fund, for the said office, and the receipt of any fees or pecuniary profits in relation to the said office, and as substitutes for the same the annual salary of four thousand three hundred pounds payable as therein provided.

Lord Chancellor shall inquire into annual Income of existing Officers in the Year commencing in Michaelmas Term 1823, and Deficiency therein, arising from 4 G. 4. c. 61.

IX. And whereas it is expedient to make more effectual provision for the ascertaining the income of certain officers of the said Court of Chancery, and the deficiencies arising from any of the provisions of the said recited Act of the fourth year of His present Majesty's reign, and for the making compensation for such deficiencies; be it therefore enacted, That at any time within twelve calendar months next after the passing of this Act, it shall and may be lawful to and for the Lord Chancellor of *Ireland*, or the Lord Keeper or Commissioners for the custody of the Great Seal of *Ireland* for the time being, to ascertain, in like manner as in other cases is provided by the said Act, the amount of the gross and net income in the office of each and every of the officers and deputies of the said court, who were such officers or deputies at the time of the passing of the said Act, and who by petition shall have desired or may desire the same, for the year commencing on the first day of *Michaelmas* term one thousand eight hundred and twenty-three, including in such income all and every salary and emolument arising from such office for and during the said year; and if the said gross income shall be less than the average gross income in the office of any such officer or deputy, certified in manner as by the said Act is required, then to inquire and ascertain in like manner whether such deficiency, or any and what part thereof, arose from the said recited Act, or from any of the provisions contained therein, or in any general orders of the Lord Chancellor and the Master of the Rolls; and in case it shall appear that such deficiency, or any part thereof, did so arise, then to certify the amount of such deficiency so arising from the said Act, or any of the provisions thereof, or the said orders; and so after the end of every succeeding year, beginning on the first day of *Michaelmas* term, to inquire and certify in like manner, so long as any of the said officers or deputies shall live, and retain their said offices respectively; and every such certificate shall be filed in manner required by the said Act in the auditor-general's office, and shall be conclusive as to the said matter; and it shall be lawful for the Lord Lieutenant or other chief governor or governors of *Ireland* to order that a sum equal to the amount of such deficiency, or such proportion thereof as such Lord Lieutenant or other chief governor or governors of *Ireland* shall think proper, shall from time to time be paid out of the consolidated fund, in full compensation for such deficiency, in manner and under the provisions and restrictions contained in the said recited Act.

Deficiency to be certified.

Lord Lieutenant may order Deficiency to be paid.

Return of Certificates and Orders as to Deficiencies and Compensations shall be laid before Parliament before issuing amount out of Consolidated Fund.

X. And be it further enacted, That a return of all sums whatever which shall be certified under the said recited Act or this Act, as deficiencies arising in consequence of the said recited Act or of the regulations and orders of the Court of Chancery, together with the copies of all certificates relating thereto, whether for compensation or for allowances for additional clerks, filed in the office of the auditor-general, under the said recited Act or this Act, and the orders of the Lord Lieutenant or other chief governor or governors of *Ireland* made thereon, shall be laid before both Houses of Parliament within one calendar month after the commencement of the session of Parliament next ensuing the making of any such order by the Lord Lieutenant or other chief governor as aforesaid, in cases where such order of the Lord Lieutenant or other chief governor or governors shall be made at any time while Parliament shall not be sitting; and in case any such order shall be made at any time during the sitting of Parliament, such order, and the returns and certificates to which the same shall relate, shall be laid before both Houses of Parliament within one calendar month next after such order shall be made, if Parliament shall continue sitting; or in case Parliament shall not continue sitting, until any such order return and certificate shall be laid before both Houses of Parliament, then every such order return and certificate shall

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be laid before both Houses of Parliament within one calendar month after the commencement of the then next session of Parliament; and no issue of money for compensation as aforesaid shall be made from the consolidated fund until the same shall have been submitted in Parliament.

Certificates and Payments already made, declared valid.

XI. Provided always, and be it enacted, That any certificate and any payment of any composition to any officer of the said court, which may have been made at any time before the passing of this Act, for the year commencing on the first day of *Michaelmas* term one thousand eight hundred and twenty-three, shall be and is hereby declared to be good valid and effectual to all intents and purposes whatever, any thing in the said recited Act or this Act to the contrary notwithstanding.

Amendment of Table No. 2. annexed to the former Act, in relation to Fees to be collected at the Rolls Office.

XII. And whereas it is expedient that the table marked number two, annexed to the said recited Act of the fourth year of His present Majesty's reign, relating to the fees of the deputy keeper of the rolls, the clerk of the inrolments, or any clerk or other person employed in the Rolls Office, should be amended; be it therefore further enacted, That from and after the first quarter-day at the Rolls Office next ensuing the passing of this Act, it shall and may be lawful for the deputy keeper of the rolls, the clerk of the inrolments, or any clerk or other person employed in the Rolls Office in Chancery, to demand collect and receive the several fees stated and set forth in the amended table of fees to this Act annexed, for and on account of the several acts matters and things therein particularly set forth; and that accordingly the fees marked seventeen twenty and twenty-four shall be in lieu and instead of the fees marked seventeen twenty and twenty-four in the table number two to the said recited Act annexed; and that the fees marked twenty-eight twenty-nine and thirty, in the said table to this Act annexed, shall be in addition to the several fees contained in the table number two annexed to the said recited Act; and that all such fees, the application of any part whereof is specified and directed by the said table to this Act annexed, shall be applied in manner directed by the said table; and the amount of such part of the said fees, as by the said table is directed to be credited to the public, and the amount of all other fees in the said table contained, the application whereof is not specified and directed in and by the said table, shall be paid and applied and accounted for in such manner, and under such regulations and provisions, and for such purposes, as is directed with respect to the fees allowed to be taken by the deputy keeper of the rolls or clerk of the inrolments, or any clerk or other person employed in the Rolls Office, by the said recited Act of the fourth year of His present Majesty's reign, and as if the regulations and provisions in the said recited Act contained were repeated and re-enacted in this Act, and as if the fees mentioned in the said table to this Act annexed had been specified and set forth in the table number two annexed to the said recited Act.

Fees to be taken as herein described.

XIII. And it is hereby declared and enacted, That the said table annexed to this Act shall be deemed and taken as an amendment and addition and as part of the said table number two, to the said recited Act annexed; and that the fees mentioned in the said table number two, annexed to the said Act, with the amendments and additions contained in the table to this Act annexed, shall be the fees to be taken by the deputy keeper of the rolls, or the clerk of the inrolments, or any clerk or other person employed in the said Rolls Office.

Deputy Keeper of the Rolls shall hold his Office during good Behaviour.

XIV. And in order to effectuate the recommendation of the said Commissioners of Inquiry on Courts of Justice in *Ireland*, in their first report on the Court of Chancery, in relation to the officers of the said court, so far as the same relates to the office of clerk or deputy keeper of the rolls, be it enacted, That the present clerk or deputy keeper of the rolls and records in His Majesty's High Court of Chancery in *Ireland*, and every person hereafter to be appointed to the said office, shall, from and after the passing of this Act, hold his said office during his good behaviour in the said office, but nevertheless to be always removeable from such office by the Master of the Rolls for the time being, for misconduct or neglect in the discharge of the duties of his said office.

Court of Chancery may appoint a Person to act for Deputy Keeper by Order, for a limited Time, in case of Sickness or unavoidable Absence.

XV. And whereas it is expedient to provide for the execution of the duties of the said clerk or deputy keeper of the rolls, in the event of his inability from sickness or absence, or unavoidable business, to discharge the same for a limited time, in like manner as provisions are made in similar events in the said recited Act in relation to the registrars and chief examiners of the said court; be it therefore enacted, That it shall and may be lawful for the said Court of Chancery, upon the petition of the said deputy keeper, stating such sickness or unavoidable cause of absence, to approve of a proper person to discharge the said duties for a time to be limited in the order, either by fixing a precise time, or by some general words, or by reference to some matter capable of being distinctly ascertained, or in such other manner as the court shall think proper, which order shall be entered in the office of the registrar; and such appointment shall not continue for any longer time than shall be mentioned and ascertained by such order, but shall then cease; and if such person so to be approved of for such limited period shall act for any longer period than mentioned in the said order, he shall be deemed guilty of a contempt and punished accordingly by the said court; and upon such order being made and entered in the office of the registrar, it shall and may be lawful for the Master of the Rolls for the time being to authorize and appoint such person so named in the said order, by instrument under his hand and seal enrolled in the said court, to act for such period mentioned in such order pursuant thereto; and such person so appointed shall have lawful power and authority to act during such period, but no longer.

Salary of the Cryer of the Rolls Court increased to 120*l.* a Year; instead of 50*l.* as under 4 G. 4. c. 61.

XVI. And whereas it is just and expedient that the cryer of the Rolls Court in *Ireland*, being employed for a larger portion of each year in the business of the said court than the cryers of the Courts of King's Bench Common Pleas and Exchequer are in their respective courts, and having no fees or emoluments whatsoever other than his salary, should be put upon an equal footing with the cryers of the said Courts of King's Bench Common Pleas and Exchequer in *Ireland*; be it therefore enacted, That the cryer of the said Rolls Court shall receive an equal salary with the cryers of the said Courts of King's Bench Common Pleas and Exchequer; (that is to say), the sum of one hundred and twenty pounds *per annum*, to be paid quarterly to the cryer of the said Rolls Court by the deputy keeper of the rolls in *Ireland*, in lieu and instead of the salary of fifty pounds *per annum* made payable to the said cryer by the said recited Act of the fourth year of His Majesty's reign, and under the rules and regulations in the said Act contained; and that the first quarterly payment of such increased salary of one hundred and twenty pounds a year shall commence and be payable to the cryer of the said Rolls Court on the first quarter-day next ensuing the passing of this Act.

Any Master's Clerk and Examiner may deliver a Statement of his yearly Emoluments to Commissioners of Public Accounts, and on their Certificate Lord Lieutenant may order Issue out of the Consolidated Fund to make up the Amount of his Emoluments to 450*l.* a Year, and 70*l.* for his Assistant Clerk.

XVII. And be it further enacted, That it shall and may be lawful for the several clerks or examiners of the masters of the said Court of Chancery, or any and every of them, within one calendar month next after the last day of *Trinity* term in the year one thousand eight hundred and twenty-five, and within the like period after the last day of *Trinity* term in every succeeding year, if and whenever any such clerk or examiner shall be desirous so to do, to transmit to the office of His Majesty's Commissioners for auditing the public accounts in *Ireland*, an account, signed with the name and in the proper hand-writing of the clerk or examiner who shall respectively transmit the same, wherein shall be stated fully and truly all and every the sum and sums of money, with the dates and particulars thereof, received by any such clerk or examiner respectively, or by any person or persons for his use, or by or under his authority, or with his privity or permission respectively, or for which such clerk or examiner, or any person or persons in his behalf, shall have given credit for or on account or by reason of any fees profits or emoluments, direct or indirect, of or by, or under colour of the office of any such clerk or examiner respectively transmitting such account, and

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including all fees and emoluments whatsoever under any commission directed to any such clerk or examiner, or under any proceeding in any cause or matter which shall pass through the master's office to which such clerk or examiner shall belong; and it shall be lawful for the said Commissioners for auditing the public accounts in *Ireland*, or any three of them, and they are hereby required, to examine every such account so delivered respectively; and such Commissioners, or any three of them, shall certify every such account respectively to the Lord Lieutenant or other chief governor or governors of *Ireland* for the time being, in such form as to the said Commissioners shall seem fit and proper, upon the examination on oath of the clerk or examiner whose name shall be signed to any such account, and of such other person or persons, if any, as the said Commissioners may require to be produced before them, or any three of them, for such purpose, by such clerk or examiner, and which oath such Commissioners, or any three of them, are hereby authorized and empowered and required to administer; and such certificate shall be filed in the office of the auditor-general or vice treasurer in *Dublin* Castle; and thereupon, whenever it shall appear by such account and certificate that the whole income received or receivable by any such clerk or examiner in any year ending on the last day of such *Trinity* term shall be less than the sum of four hundred and fifty pounds, after payment or allowance of the sum of seventy pounds for one assistant clerk to such master's clerk or examiner, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of *Ireland* for the time being, to direct that such sum or sums as shall be sufficient to make the profits and emoluments of the office of such clerk or examiner amount to the sum of four hundred and fifty pounds, and to pay the sum of seventy pounds to his assistant clerk as aforesaid, shall and may be issued and paid to such clerk or examiner, out of the produce of the consolidated fund arising in *Ireland*, free and clear of all deductions taxes and charges whatsoever: Provided always, that every such clerk or master's examiner shall pay in each and every year to such his assistant clerk the said salary of seventy pounds *per annum*.

On all References and Proceedings Summonses shall be issued by Master for each Meeting.

XVIII. And be it further enacted, That in all references or matters before any master in Chancery, in which it has been heretofore customary to issue summonses for the parties to attend such master, the master before whom any proceeding on such reference or matter shall be had shall continue to issue summonses from time to time, and shall not in any case or under any pretence whatever proceed on any such reference or matter, unless a summons for the meeting at which such proceeding shall be required shall have been signed by him, and shall be produced before him at the meeting for proceeding on such reference or matter.

Clerks and Examiners of the Masters empowered to take Affidavits, &c. as to Matters to be put in on Oath in the Court of Chancery.

XIX. And be it enacted, That from and after the commencement of this Act it shall and may be lawful for the several clerks and examiners of the masters in Chancery in ordinary, and all other persons who may be hereafter appointed clerks and examiners to the present or any future master in Chancery in ordinary, while they shall respectively continue such clerks and examiners, and the said clerks and examiners are hereby fully authorized empowered and directed to take affidavits or affirmations, answers, examinations, or other matters whatever, to be put in on oath in the said Court of Chancery, or in matters on petitions in cases of bankrupts lunatics or minors, and to administer the necessary oaths and affirmations for that purpose; and all such answers, oaths, affidavits, or affirmations shall be of the same force validity and effect, and shall and may be filed used and acted upon respectively, as fully and effectually to all intents and purposes whatsoever; and all persons swearing same shall be liable to all such penalties punishments and consequences for any wilful and corrupt false swearing or perjury contained therein, as if the same had been sworn or affirmed before the said Court of Chancery, or all or any of the masters in ordinary thereof.

No. XXXV.
6 Geo. IV.
c. 30.

TABLE

TO WHICH THIS ACT REFERS.

AMENDED TABLE OF FEES

Which it shall be lawful for the Deputy Keeper of the Rolls, the Clerk of the Inrolments, or any clerk or other person employed in the Rolls Office in Ireland, to demand or accept for or on account of certain acts matters and things done in or concerning the business at the Rolls Office.

	£.	s.	d.
17. For re-attesting all Copies of Pleadings and Records, for every twenty sheets of seventy-two words which such copy shall contain	0	1	0
Any one fraction of twenty sheets to be charged as twenty sheets, but not more than one fraction to be charged on any one copy.			
20. For every Search for and furnishing Certificate of the Pleadings filed in a Cause, with the periods of filing the same, or of any Inrolment of any Decree and the length thereof, and also that any particular Pleading has not been filed, or that any Decree has not been inrolled, also the inrolment of any Patent Deed or other Document	0	2	6
Such Fees to be thus applied by the Deputy Keeper:	s.	d.	
To be credited to the Public . . .	1	8	
To be paid to the Clerks making out every such Certificate	0	10	
	2	6	
24. For every Decree given in Chancery, when inrolled .	0	6	0
28. For setting down every Cause for hearing in the Rolls Court List, the same to be collected by the Registrars on the setting down of each Cause, and to be paid over to and accounted for by the Deputy Keeper to the Public with the other Fees . . .	0	5	5
29. For Tipstaffs on the setting down of every such Cause, and to be collected in like manner, and paid to Tipstaffs at the end of each term by the Registrars .	0	1	1
30. For the attested close Copies of Pleadings that have been before copied in wide lines, and of Pleadings of forty years standing, and also of Suitors' own Pleadings of which copies shall be required from the office, for each sheet containing the complement of three office sheets of seventy-two words each	0	0	10½
A fraction of a sheet of such copy to be charged as an entire sheet, but not more than one fraction to be charged in any one copy.			
Such Fees to be thus applied by the Deputy Keeper of the Rolls:	s.	d.	
To be credited to the Public . .	0	4	
To be paid to the Writing Clerks on each sheet .	0	4½	
to the Conducting Clerks . .	0	2	
	0	10½	

No. XXXVI.
6 Geo. IV. c. 60.

[No. XXXVI.] 6 Geo. IV. c. 60.—An Act to amend an Act of the Fourth Year of His present Majesty's Reign, for the better Administration of Justice in the Equity Side of the Court of Exchequer in *Ireland*.—[22d *June* 1825.]

4 G. 4. c. 70.

WHEREAS by an Act passed in the fourth year of the reign of His present Majesty, intituled *An Act for the better Administration of Justice in the Equity Side of the Court of Exchequer in* Ireland, it is amongst other things enacted, that from and after the commencement of that Act, there should be two chief examiners at the equity side of the said court, who should perform the several duties mentioned and specified for them in the tables in that behalf to the said Act annexed; and that the said two examiners should be appointed by the chief baron of the said court, by deed to be by him duly executed and inrolled in the said court: And whereas two examiners have been accordingly duly appointed by the chief baron, from among the four former examiners of the said court: And whereas the said two examiners so appointed have since the first day of *August* one thousand eight hundred and twenty-three duly performed all the duties of their office, but it has been found that the total amount of the fees received by them, under and according to the provisions of the said Act, and the tables in that behalf thereto annexed, has been an inadequate remuneration to such examiners for devoting their whole time to the execution of the duties of their said office: And whereas it is expedient that further regulations should be made with respect to such office, and that an adequate provision should be made for such two examiners as herein-after provided; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the office of chief examiners at the equity side of the said court shall be held by the persons who have been appointed thereto, and by such persons as shall hereafter be appointed to the said office, during their good behaviour therein, provided always, that it shall and may be lawful to and for the said Court of Exchequer, upon complaint duly made, and after full inquiry into the alleged grounds thereof, by affidavit, or otherwise as the said court shall think fit, to remove the said examiners or either of them or any future examiner, from his office, for any offence or misconduct therein which such court shall deem deserving of such punishment; and thereupon such officer shall cease to hold or be entitled to such office.

Examiners shall hold their Office during good behaviour, but removeable by the Court on Complaint, &c.

II. And it be further enacted, That from and after the passing of this Act there shall be issued, paid, and payable, out of, and charged and chargeable upon the consolidated fund of the United Kingdom of *Great Britain* and *Ireland*, after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former Act or Acts of Parliament to be paid out of the same, to each of the said two chief examiners at the equity side of the Court of Exchequer in *Ireland*, such sum and sums of money, as together with the fees received and paid, and to be henceforth received and paid to each of them under the provisions of the said recited Act, after deducting out of such fees the monies paid by the said examiners respectively to copying clerks, and for other necessary official expences, shall be sufficient to make the yearly salary and emoluments of each of the said two examiners amount to the sum of eight hundred pounds, clear of all deductions whatsoever, commencing from the first day of *August* one thousand eight hundred and twenty-three, and shall be paid and payable in manner herein-after mentioned.

Examiners shall receive out of Consolidated Fund sufficient to make up (with Fees) 800*l.* a Year.

III. And be it further enacted, That the two chief examiners at the equity side of the said Court of Exchequer shall, within one calendar month next after the passing of this Act, deliver and transmit to the Barons of the said Court of Exchequer one or more account or accounts, signed with their names and in their proper hand-writing respectively,

Examiners shall deliver Accounts of Amount of Fees received.

wherein they shall either jointly or severally as they shall think proper, state all and every sums and sum of money received by them respectively, or by any clerk or clerks or other person or persons for their use, or by or under their authority, or with their privity or permission respectively, or for which they or any person or persons on their behalf respectively shall have given credit, for or on account or by reason of the fees or pecuniary profits of or by or under colour of the said offices of chief examiners at the equity side of the said Court of Exchequer, and of the sums from time to time paid by them respectively thereout to copying clerks, and for other official expences, from and after the first day of *August* one thousand eight hundred and twenty-three, up to the fifth day of *April* one thousand eight hundred and twenty-five; and that within fourteen days after the fifth day of *July* one thousand eight hundred and twenty-five, and in like manner within fourteen days next after the tenth day of *October*, the fifth day of *January*, the fifth day of *April*, and the fifth day of *July* in each and every year, such two chief examiners, from time to time, for the time being, shall deliver and transmit to the Barons of the said Court of Exchequer a like account of all and every sum and sums of money so received in the quarter of a year ending on the said days respectively; and the barons of the said court, or any two of them, shall examine the said accounts respectively; and such barons, or any two of them, shall certify such amount to the vice treasurer of *Ireland* for the time being, in such form as to the said Barons shall seem fit and proper, upon the examination on the oaths of each of such two chief examiners of the said court, and of such clerk or clerks or other persons as shall be produced before the said barons or any two of them, by the said officers or either of them, or as the said barons shall think fit to examine touching the same; and which oaths such barons or any two of them are hereby authorized and empowered and required to administer.

Which shall be examined and certified to Vice Treasurer, by the Barons of the Exchequer, after Inquiry on Oath.

IV. And be it further enacted, That in whatever sum the whole amount which shall have been received by or payable to the said two chief examiners, in respect of their said offices, between the said first day of *August* one thousand eight hundred and twenty-three, and the said fifth day of *April* one thousand eight hundred and twenty-five (after deducting thereout the sums paid to copying clerks, and other necessary official expences, as aforesaid), shall be less than what will make the annual salary or pecuniary profits of each of the said two chief examiners amount to a sum at the rate of eight hundred pounds a year to each of such examiners, the same shall be the sums to be issued and paid to them respectively out of the said consolidated fund, for the period between the said first day of *August* one thousand eight hundred and twenty-three, and the said fifth day of *April* one thousand eight hundred and twenty-five; and that from and after the said fifth day of *July* one thousand eight hundred and twenty-five, in whatever sum the whole amount which shall have been received or shall have been payable to each of the said two chief examiners, in respect of their said offices, within the quarter of a year, ending on the said fifth day of *July* one thousand eight hundred and twenty-five, or within any subsequent quarter of a year comprised in any such account, (after deducting thereout the sums paid for official expences, as aforesaid,) shall be less than the clear sum of two hundred pounds for each of the said two chief examiners, the same shall be the sums to be issued for the quarter for which such account shall be delivered, and shall be computed and ascertained so as to make up the whole of the salary and pecuniary profits of each of the said two chief examiners to the quarterly sum of two hundred pounds; and every such certificate of the said barons shall be produced to and entered at the office of the vice treasurer of *Ireland*; and the sums payable under or by virtue of such certificate shall be issued and paid out of the said consolidated fund, as if the sums so to be ascertained had been specifically mentioned and set forth in this Act.

Sums requisite to make up Deficiency of 800*l.* a Year, from Aug. 1, 1823, to April 5, 1825, and 200*l.* quarterly afterwards, shall be issued accordingly.

V. Provided always, and be it enacted, That whenever and so often as it shall appear, by any account to be delivered by any chief examiner at quarterly shall be paid by Examiners into the Exchequer, and carried to Consolidated Fund,

Any Excess above 200*l.*

No. XXXVII. 6 Geo. IV. c. 93.

the equity side of the said Court of Exchequer, in pursuance of this Act, and by the certificate of the Barons of the said Exchequer, or any two of them, to be made in pursuance of this Act, that the sums received by or payable to any such chief examiner, in any quarter of a year ending on such days, as aforesaid, (after deducting thereout the sums paid to copying clerks, and other necessary official expences as aforesaid,) shall exceed the clear sum of two hundred pounds, the examiners who shall deliver in such account as aforesaid shall, within seven days next after the date of such certificate, pay, or cause to be paid into the receipt of the Exchequer in *Ireland*, the amount of all such sum and sums of money as shall have been so received, by or payable to him, exceeding such sum of two hundred pounds, and which sums so to be paid shall be carried to and made part of the said consolidated fund.

100*l.* a Year out of Consolidated Fund to each Examiner for One Assistant Clerk.

VI. And be it further enacted, That each of the two chief examiners of the said court shall employ one chief or assistant clerk, to superintend the preparing of all office copies, and otherwise to aid in the discharge of the duties of their said office; which clerks so to be employed before they shall act as such, shall take and subscribe the oath in that behalf directed by the said recited Act of the fourth year of His Majesty's reign; and that from and after the fifth day of *July* one thousand eight hundred and twenty-five, there shall be issued and paid out of the said consolidated fund, by such quarterly payments as aforesaid, to each of such examiners, the further annual sum of one hundred pounds, as and for the salary and remuneration of each such chief or assistant clerk, who shall be so employed as aforesaid, clear of all deductions.

Examiners empowered to administer Oaths to Witnesses.

VII. And whereas no power is given by the said recited Act of the fourth year of His present Majesty's reign, to the examiners at the equity side of the said Court of Exchequer, to administer an oath to any witness or witnesses who shall be produced to be examined before them; and it is meet and expedient that such examiners should be authorized to swear the different witnesses who may be examined before them, and to administer the necessary oaths and affirmations for that purpose; be it therefore enacted, That from and after the passing of this Act, it shall and may be lawful, to and for any and every chief examiner at the equity side of the said Court of Exchequer for the time being, and he and they is and are hereby respectively authorized empowered and required to swear and take the affirmation of all and every such witnesses and witness as shall be produced or attend before such examiners respectively to be examined, and to administer the necessary oaths and affirmations for that purpose; and that the depositions of all and any and every such witnesses and witness shall be of the same force, validity, and effect, and shall, and may be filed, used, and acted upon, as fully and effectually, to all intents and purposes whatsoever, as if such witnesses or witness had been sworn or had affirmed before the said Court of Exchequer or any of the barons thereof.

[No. XXXVII.] 6 George IV. c. 93.—An Act to render valid certain Decrees and Orders at the Rolls Court.—[5th *July* 1825.]

WHEREAS by divers letters patent under the Great Seal of *Great Britain*, made and issued during the reign of His late Majesty King *George* the Third, and also since the decease of His said late Majesty, certain of the Justices of His Majesty's Courts of King's Bench and Common Pleas, and of the Barons of His Majesty's Court of Exchequer, and others associated with them, have been assigned, and power has been given to a certain number of them, in the absence of the Lord Chancellor or Lord Keeper for the time being of that part of the United Kingdom of *Great Britain* and *Ireland* called *Great Britain*, to hear and examine all matters causes and petitions whatsoever depending in the King's Chancery, between His Majesty's liege subjects or others whomsoever, and the same finally to determine, and to cause due execution to be done thereupon: And whereas such commissions were founded

upon ancient and continued usage: And whereas divers of the justices and others assigned by the said commissions to hear and determine the matters causes and petitions aforesaid, have, in conformity with the practices and usages of their predecessors in similar commissions, upon various occasions sat at the Rolls Court during the illness or absence of the Master of the Rolls for the time being, and heard and examined and determined divers matters causes and petitions depending in the King's said Chancery, and set down to be heard at the said Rolls Court: And whereas it hath been doubted whether such justices and others had power under such commissions as aforesaid to hear examine and determine any of the matters causes and petitions aforesaid; but it is expedient that all acts done in the supposed exercise of the powers aforesaid should be confirmed: And whereas the name of the late Chief Baron *Richards* was included in the several commissions which issued as aforesaid whilst he was Puisne Baron of the Court of Exchequer, but when he was appointed chief baron of that court, his name was omitted in all subsequent commissions, according to ancient usage; but nevertheless the said Chief Baron *Richards*, after his name had been so omitted in such commissions as aforesaid, heard examined and determined divers matters causes and petitions at the Rolls, in conjunction with certain others of the persons named in the said commissions, as if his name had been still contained in such commissions: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all decrees, decretal and other orders, at any time during the reign of His late Majesty King *George* the Third, or during the reign of His present Majesty, made and pronounced at the Rolls Court, in the absence of the Master of the Rolls, and all other acts and things done at the court aforesaid, in the supposed exercise of any of the powers aforesaid, and all acts done in the execution or performance of any such decrees or orders, shall have and be of as great and the like validity, effect, efficacy, force, and virtue, as if such decrees decretal and other orders, and all other acts and things, had respectively been heard, made, pronounced, determined, done, and executed by the Master of the Rolls for the time being in whose place or for whom any of such justices and others sat as aforesaid; and the same shall or may be enforced, executed, enrolled, re-heard, or appealed from in the same manner as if they respectively were decrees or orders of the Master of the Rolls in whose time they were pronounced: Provided always, that this Act shall not extend to any decree or order made or pronounced as aforesaid, where the cause, petition, motion, or matter wherein or whereupon the same was made or pronounced as aforesaid has been actually reheard before the beginning of this present session of Parliament, in consequence of the invalidity of the decree or order made or pronounced thereon as aforesaid.

All Decrees, &c. pronounced at the Rolls Court, in the Absence of the Master of the Rolls, shall have the like Validity as if the Master of the Rolls had heard and determined the same.

Not to extend to any Decree, &c. wherein the same has been actually re-heard.

[No. XXXVIII.] 7 & 8 George IV. c. 51.—An Act for further amending an Act passed in the Fourth Year of His present Majesty's Reign, for the better Administration of Justice in the Equity Side of the Court of Exchequer in *Ireland*.—[23d *June* 1827.]

WHEREAS by an Act passed in the fourth year of the reign of His present Majesty, intituled *An Act for the better Administration of Justice in the Equity Side of the Court of Exchequer in* Ireland, reciting that there were then four examiners at the equity side of the said Court of Exchequer, it was enacted, that from and after the commencement of the said Act there should be but two chief examiners at the equity side of the said court, who should perform the several duties mentioned and specified for them in the tables in that behalf thereto annexed; and that the said two examiners should be appointed by the chief baron of the said court, by deed to be by him duly executed and enrolled in the said court;

4 G. 4. c. 70.

No. XXXVIII. 7&8 Geo. IV. c. 51.

and further, that the two first examiners to be appointed under the provisions of the said Act should be appointed from among the four then examiners of the said court; and further, that the said court should report to the Lord Lieutenant, or other chief governor or governors of *Ireland* for the time being, whether in their opinion any and what compensation ought to be made to the two examiners of the said court, and on what ground, for any loss which might be sustained by such officer or officers in consequence of the said Act or the provisions therein contained; and that a copy of such report should be laid before both Houses of Parliament, immediately after the commencement of the then next session of Parliament: And whereas *John Swift Emerson* and *Thomas Pennefather* were two of the examiners of the said court at the time of the passing of the said Act, and the chief baron having appointed the other two examiners of the court to be examiners under the provisions of the said Act, the said *John Swift Emerson* and *Thomas Pennefather* presented a memorial to the chief baron and barons of the said court, praying that the said chief baron and barons would take the case of them the said *John Swift Emerson* and *Thomas Pennefather* into consideration, and report what compensation they ought, in the opinion of the said chief baron and barons, to have in consequence of the said Act: And whereas the said chief baron and barons of the said court did, in and by their report to His Excellency *Richard* Marquess *Wellesley*, Lord Lieutenant General and General Governor of *Ireland*, bearing date the third day of *February* one thousand eight hundred and twenty-six, report their opinion, that inasmuch as the said *John Swift Emerson* and *Thomas Pennefather* were deprived of their office, not from any default of theirs, but for the advantage of the public, the annual sum of two hundred pounds to each, for their lives respectively, would be a reasonable compensation for their loss in consequence of the said Act; and did further submit it as their opinion, that such annual sum should commence from the first day of *August* one thousand eight hundred and twenty-three, the time when the said Act came into operation, and the period from whence the salary for the new examiners was appointed to commence, under an Act made in the sixth year of His present Majesty, for amending the said recited Act of the fourth year of His present Majesty: And whereas a copy of the said report has been duly laid before both Houses of Parliament; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act there shall be issued and paid to each of them the said *John Swift Emerson* and *Thomas Pennefather* the several annual sums of two hundred pounds during their respective lives, yearly and every year, out of and charged upon the Consolidated Fund of *Great Britain* and *Ireland*, after payment of all sums previously charged on the said fund, such annual sum to commence from the said first day of *August* one thousand eight hundred and twenty-three, and to be paid and payable by four quarterly payments in each and every year, on every twenty-fifth day of *March*, twenty-fourth day of *June*, twenty-ninth day of *September*, and twenty-fifth day of *December*, the first payment thereof to be made on the first of the said days which shall happen next after the passing of this Act, and in proportion to the time which shall then have elapsed from the said first day of *August* one thousand eight hundred and twenty-three; and also to the executors of the said *John Swift Emerson* and *Thomas Pennefather* respectively such proportion of any such quarterly payment as at the time of the decease of the said *John Swift Emerson* and *Thomas Pennefather* respectively shall be due from the quarter-day next preceding the time of such decease; and in case it shall happen that either of them the said *John Swift Emerson* and *Thomas Pennefather* should die before the quarter-day next after the passing of this Act, then such proportion of the said respective annuities as shall be due from the said first day of *August* one thousand eight hundred and twenty-three, up to the day of the decease of the party so dying, shall be paid to the executors of such party so dying.

The Sum of 200*l.* per Annum shall be paid to *J. S. Emerson* and *T. Pennefather*, by quarterly Payments, and be charged on the Consolidated Fund.

PART IV.

CLASS XXVI.

Coroner.

[No. I.] 58 George III. c. 95.—An Act to regulate the Election of Coroners for Counties.—[10th *June* 1818.]

58 George III. c. 95.

WHEREAS there are no sufficient regulations for the election of coroners for counties; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, upon every election to be made of any coroner or coroners of any county in *England* and *Wales*, the sheriff of the county where such election shall be made, shall hold his county court for the same election at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ *de coronatore eligendo*, or upon the same day; and then shall adjourn the same court to some convenient day not exceeding fourteen days, giving ten days' notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence his under-sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll, in some public place, by the same sheriff, or his under-sheriff as aforesaid in his absence, or others appointed for the taking thereof as aforesaid; and every such poll shall commence on the day upon which the same shall be demanded, and be duly and regularly proceeded in from day to day (*Sunday* excepted) until the same be finished; but so as that no poll for such election shall continue more than ten days at most, (*Sunday* excepted,) and the said poll shall be kept open seven hours at the least each day, between the hours of nine in the morning and five at night: And for the more due and orderly proceeding in the said poll, the said sheriff, or in his absence his under-sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet or convenient for the taking thereof; which clerks shall all take the said poll in the presence of the said sheriff or his under-sheriff, or such as he shall depute; and before they begin to take the said poll, every clerk so appointed shall by the said sheriff or his under-sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his abode and freehold, and the name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by the candidates, or either of them, and which oaths of the said clerks, the said sheriff or his under-sheriff, or such as he shall depute, are hereby empowered to administer; and the sheriff, or in his absence his under sheriff as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate, to be inspector of every clerk who shall be appointed for taking the poll; and every freeholder, before he is admitted to poll at the same election, shall, if required by the candidates, or any of them, first take the oath hereinafter mentioned, which oath the said sheriff by

Sheriff to hold his county court for the election of Coroner at the usual place of election;

and if election not determined on view then to proceed to take a poll.

Commencement and duration of poll.

Poll clerks to be appointed and sworn.

Inspector of poll-clerk to be appointed.

Freeholder, if required, to be sworn before he polls.

No. I. 58 Geo. III. c. 95.

himself or his under-sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, is hereby authorized to administer; *videlicet*,

The oath of qualification.

'YOU swear [*or, being one of the people called Quakers, you solemnly affirm*] That you are a freeholder of the county of and have a freehold estate, consisting of lying at within the said county; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election; and that the place of your abode is at [*and if it be a place consisting of more streets or places than one, specifying what street or place*] that you are twenty-one years of age, as you believe, and that you have not been before polled at this election.'

Punishment against perjury, or subornation of perjury.

And in case any freeholder or other person taking the said oath or affirmation hereby appointed to be taken by him as aforesaid, shall thereby commit wilful and corrupt perjury, and be thereof convicted, and if any person shall unlawfully or corruptly procure or suborn any freeholder or other person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they for every such offence shall incur such pains and penalties as are declared in and by two Acts of Parliament, the one made in the fifth year of the late Queen *Elizabeth*, 5 Eliz. c. 9. intituled *An Act for Punishment of such as shall procure or commit any wilful Perjury*; and the other made in the second year of his late Majesty 2 Geo. 2. c. 25. King *George* the Second, intituled *An Act for the more effectual preventing and further Punishment of Forgery, Perjury, and Subornation of Perjury, and to make it Felony to steal Bonds, Notes, or other Securities for payment of Money;* and by any other law or statute now in force for the punishment of perjury, or subornation of perjury.

Mortgagor and cestui que trust to vote.

II. And be it further enacted, That no person or persons shall be allowed to have any vote at such elections for coroner or coroners of any county in *England* and *Wales* as aforesaid, for or by reason of any trust-estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of such estate; but that the mortgagor or *cestui que trust* in possession shall and may vote for the same estate, notwithstanding such mortgage or trust; and that all conveyances of any messuages, lands, tenements and hereditaments, in order to multiply voices, or to split or divide the interest in any houses or lands among several persons, to enable them to vote at elections for a coroner of any county as aforesaid, are hereby declared to be void and of none effect.

Expenses of sheriff and poll-clerks to be paid by the candidates.

III. And be it further enacted, That all the reasonable costs, charges and expenses the said sheriff or his under-sheriff or other deputy shall expend or be liable to in and about the providing of poll-books, booths, and clerks (such clerks to be paid not exceeding one pound and one shilling each *per diem*) for the purpose of taking the poll at any such election, shall be borne, sustained, and paid by the several candidates at such election, in equal proportions.

[No. II.] 1 George IV. c. 28.—An Act to repeal an Act made in the fiftieth Year of the Reign of his late Majesty, for regulating the Fees of Coroners in *Ireland*, upon holding Inquisitions, and to make other Provisions for that purpose.

PART IV.

CLASS XXVII.

Warden.

59 George III. c. 64.—An Act to facilitate Proceedings against the Warden of the Fleet, in Vacation.—[2d *July* 1819.]

59 George III. c. 64.

WHEREAS by the practice of his Majesty's Courts of Common Pleas and Exchequer at *Westminster*, and also by reason of the enactment made in the twelfth section of the statute made and passed in the eighth and ninth years of the reign of his late Majesty King *William* the Third, chapter twenty-seven, no proceedings can be commenced in the time of vacation, at the suit of any person or persons, against the Warden of his Majesty's prison of the Fleet, for or in respect of the escape of any prisoner or prisoners from and out of his custody: And whereas it is expedient that the law and the practice of the said courts should be altered in this respect; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act it shall and may be lawful for any person or persons having cause or causes of action against the warden of the said prison, for or in respect of the escape of any person or persons in his custody, from and out of the said custody, to commence his or their action against the said warden by filing his or their bill against the said warden at any time in vacation, in the office of the prothonotaries of the said Court of Common Pleas, or with the clerk or deputy clerk of the pleas in the office of pleas in the Court of Exchequer, for or in respect of such escape, and to entitle such bill as of the preceding term, a copy of which said bill so filed shall, within twenty-four hours after the filing thereof, unless a *Sunday* or public holiday intervene, and in that case on the day next after such *Sunday* or public holiday, be delivered to the said warden or his deputy, or to the turnkey or porter of the said prison; and the said warden shall appear and plead to the said bill within the first four days of the following term, otherwise it shall be lawful for such person or persons, having such cause or causes of action as aforesaid, to assign judgment against the said warden in such action; and for the better ascertaining, as well the time of filing such bill, as of delivering such copy thereof as aforesaid, the proper officer of the court in which such bill shall be filed, or his lawful deputy, shall, and he is hereby directed, at the time of filing such bill, to indorse upon the same a memorandum of the time of filing such bill; and the said warden or his deputy, or the turnkey or porter of the said prison shall, and he is hereby directed, at the time of receiving such copy of the said bill, to indorse upon such copy a memorandum of the time of receiving such copy as aforesaid.

8 & 9 W. 3. c. 27.

Bill may be filed against the Warden of the Fleet, in Vacation.

Memorandum of the time of filing and receiving such Bill shall be indorsed.

PART IV.

CLASS XXVIII.

Bankrupt Laws.

[No. I.] 5 George IV. c. 98.—An Act to consolidate and amend the Bankrupt Laws.—[21 *June* 1824.]

WHEREAS it is expedient to amend the laws relating to bankrupts, and to simplify the language thereof, and to consolidate the same so amended and simplified in one Act; and to make other provisions respecting bankrupts; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act passed in the thirty-fourth and thirty-fifth years of the reign of King *Henry* the Eighth, intituled *An Act against such Persons as do make Bankrupt;* and also an Act passed in the thirteenth year of the reign of Queen *Elizabeth*, intituled *An Act touching Orders for Bankrupts;* and also an Act passed in the first year of the reign of King *James* the First, intituled *An Act for the better Relief of the Creditors against such as shall become Bankrupts;* and also an Act passed in the twenty-first year of the reign of King *James* the First, intituled *An Act for the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts, and for inflicting Corporal Punishment upon the Bankrupts, in some special Cases;* and also an Act passed in the thirteenth and fourteenth years of the reign of King *Charles* the Second, intituled *An Act declaratory concerning Bankrupts;* and also an Act passed in the tenth year of the reign of Queen *Anne*, intituled *An Act for repealing a Clause in the above-mentioned Statute, passed in the Twenty-first Year of the Reign of King* James *the First, and for the Explanation of the Laws relating to Bankruptcy in cases of Partnership;* and also an Act made in the seventh year of the reign of King *George* the First, intituled *An Act for explaining and making more effectual the several Acts concerning Bankrupts;* and also an Act passed in the fifth year of the reign of King *George* the Second, intituled *An Act to prevent the committing of Frauds by Bankrupts;* and also an Act passed in the nineteenth year of the reign of King *George* the Second, intituled *An Act for amending the Laws relating to Bankrupts;* and also so much of an Act passed in the twenty-fourth year of the reign of King *George* the Second, the title of which begins with the words, *An Act to continue several Laws therein mentioned, for preventing Theft and Rapine,* and concludes with the words, *and to make some further Provisions in relation to the signing of Certificates for the Discharge of Bankrupts,* as relates to the prevention of frauds by bankrupts, and to some further provisions in relation to the signing of certificates for the discharge of bankrupts; and also an Act passed in the fourth year of the reign of His late Majesty King *George* the Third, intituled *An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts being entitled to Privilege of Parliament, and becoming insolvent;* and also so much of an Act passed in the thirty-sixth year of the reign of His late Majesty, intituled *An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of* England, as relates to trustees in whose names stock shall be standing at the Bank, becoming bankrupt, and to bankrupts refusing to transfer stock standing in their own right; and also an Act passed in the thirty-seventh year of the reign of His late

Former Enactments respecting Bankrupts repealed.
34 & 35 H. 8. c. 4.
13 Eliz. c. 7.
1 Jac. 1. c. 15.
21 Jac. 1. c. 19.
13 & 14 Car. 2. c. 24.
10 Ann. c. 15.
7 G. 1. c. 31.
5 G. 2. c. 30.
19 G. 2. c. 32.
24 G. 2. c. 57.
4 G. 3. c. 33.
36 G. 3. c. 90.

No. I. 5 Geo. IV. c. 98.

Majesty, intituled *An Act to make perpetual an Act passed in the Fifth Year of the Reign of His late Majesty, intituled 'An Act to prevent the committing 'of Frauds by Bankrupts;'* and also so much of an Act passed in the forty-fifth year of the reign of His late Majesty, intituled *An Act to amend an Act passed in the Fourth Year of His present Majesty, intituled 'An Act 'for preventing Inconveniences arising in Cases of Merchants, and such other 'Persons as are within the Description of the Statutes relating to Bankrupts 'being entitled to Privilege of Parliament, and becoming insolvent,' and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament,* as relates to the execution of certain bonds by traders having privilege of Parliament, and to the disobedience by such traders of orders for payment of money; and also an Act passed in the forty-sixth year of the reign of His late Majesty, intituled *An Act to amend the Laws relating to Bankrupts;* and also an Act passed in the forty-ninth year of the reign of His late Majesty, intituled *An Act to alter and amend the Laws relating to Bankrupts*; and also an Act passed in the fifty-sixth year of the reign of His late Majesty, intituled *An Act to extend the Provisions of an Act of the First Year of the Reign of King* James *the First, intituled 'An Act for the better Relief of the Creditors against such 'as shall become Bankrupts;'* and also so much of an Act passed in the first year of the reign of His present Majesty, intituled *An Act to repeal so much of the several Acts passed in the Thirty-ninth Year of the Reign of* Elizabeth, *the Fourth of* George *the First, the Fifth and Eighth of* George *the Second, as inflicts Capital Punishment on certain Offences therein specified, and to provide more suitable and effectual Punishment for such Offences* as relates to the punishment of frauds committed by bankrupts; and also an Act passed in the third year of the reign of His present Majesty, intituled *An Act to amend the Laws relating to Bankrupts under joint Commissions*; and also another Act passed in the third year of the reign of His present Majesty, intituled *An Act to amend the Laws relating to Bankrupts*, be hereby repealed.

37 G. 3. c. 124. 45 G. 3. c. 124. 46 G. 3. c. 135. 49 G. 3. c. 121. 56 G. 3. c. 137. 1 G. 4. c. 115. 3 G. 4. c. 74. 3 G. 4. c. 81.

What Persons shall be deemed Traders liable to become Bankrupt.

II. And be it enacted, That all bankers, brokers, underwriters, and persons insuring ships, or their freight, or other matters against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, innkeepers, stage coach proprietors, brewers, maltsters, dyers, printers, bleachers, fullers, scavengers, manufacturers of alum or kelp, cattle or sheep salesmen and all persons engaged in any traffic of drawing and redrawing, negotiating or discounting bills of exchange, promissory notes, or negotiable securities, except exchequer, navy, or victualling bills, or ordnance debentures; and all persons making bricks or burning lime for sale, being tenants, lessees, or partners in such trade or undertaking, and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt; provided that no farmer, grazier, common labourer, or workman for hire, receiver-general of the taxes, or member of, or subscriber to any incorporated, commercial, or trading companies established by charter, or by or under the authority of any Act of Parliament, shall be deemed as such a trader liable by virtue of this Act to become bankrupt.

Departing the Realm; departing from Dwelling House; absenting; beginning to keep House; yielding to Prison;

III. And be it enacted, That if any such trader shall depart this realm, or being out of the realm shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods money or chattels to be attached, sequestered, or taken in execution, or make, or cause to be made, either within the United Realm, or elsewhere, any grant or conveyance of any of his lands, tenements, goods or chattels, or make or cause to be made

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any surrender of any of his copyhold lands or tenements, or make or cause to be made any gift, delivery or transfer of any of his goods or chattels, every such trader doing, suffering, procuring, executing, permitting, making or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors in the recovery of their debts, shall be deemed to have thereby committed an act of bankruptcy.

Verbal Declaration of Insolvency; lying in Prison; escaping out of Prison; Acts of Bankruptcy. Proviso as to lying in Prison.

IV. And be it enacted, That if any such trader shall, at any meeting of his creditors, declare or admit that he is insolvent, or unable to meet his engagements, or if any such trader having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall upon such or any other arrest or commitment for debt, or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days; or if any such trader having been so arrested, committed, or detained, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy; provided that if any such trader shall be in prison at the time of the commencement of this Act, such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months.

Petition to take the Benefit of the Insolvent Act, an Act of Bankruptcy; Commission within Two Months.

V. And be it enacted, That if any such trader shall petition to take the benefit of the present or any future Act for the relief of insolvent debtors, such petition when filed shall be an act of bankruptcy; but no commission shall issue thereupon, unless it be sued out within two calendar months next after notice of such petition has been inserted in the *London Gazette*.

Declaration of Insolvency left at the Bankrupt Office, an Act of Bankruptcy. Advertisement to be inserted in the Gazette. Commission must issue within Two Months. Docket not to be struck before Four Days in a Town or Eight in a Country Commission. Gazette Evidence before the Commissioners.

VI. And be it enacted, That if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the *London Gazette* to insert an advertisement of such declaration therein, and every such declaration shall after such advertisement inserted as aforesaid be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the *London Gazette* within eight days after such declaration was filed, and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement in case such commission is to be executed in *London*, or before the expiration of eight days next after such insertion in case such commission is to be executed in the country, and in all proceedings before the Commissioners the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

Declaration having been concerted between Bankrupt and Creditor, not to invalidate Commission.

VII. And be it enacted, That no commission under which the adjudication shall be grounded on the act of bankruptcy, being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

Trader compounding with Petitioning Creditor an Act of Bankruptcy.

VIII. And be it enacted, That if any such trader liable by virtue of this Act to become bankrupt shall, after a docket struck against him, pay to the person or persons who struck the same or any of them, money, or give or deliver to any such person any satisfaction or security for his debt or any part thereof, whereby such person may receive more in the pound in respect of his debt than the other creditors, such payment gift, delivery, satisfaction, or security shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be

Commission may either be superseded or continued;

superseded, and a new commission may issue upon such last-mentioned or any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction or security, as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security, as aforesaid, or the full value thereof, to such person or persons as the Commissioners acting under such original commission, or any new commission, shall appoint for the benefit of the creditor of such bankrupt.

Penalty on Creditor so compounding.

IX. And be it enacted, That if any such trader, having privilege of Parliament, shall commit any of the aforesaid acts of bankruptcy, a commission of bankrupt may issue against him; and the Commissioners and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

Traders having Privilege of Parliament, committing Acts of Bankruptcy, may be proceeded against as other Traders.

X. And be it enacted, That if any creditor or creditors of any such trader having privilege of Parliament, to such amount as is hereinafter declared requisite to support a commission, shall file an affidavit or affidavits in any Court of Record at *Westminster* that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not, within one calendar month after personal service of such summons, pay secure or compound, for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons, cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons; and any such creditor or creditors of such trader may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Trader having Privilege of Parliament, not paying or compounding to the Satisfaction of the Creditor, and also entering an Appearance to the Action within One Month, an Act of Bankruptcy.

XI. And be it enacted, That if any decree or order shall have been pronounced in any cause depending in any Court of Equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of Parliament, ordering such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof, pursuant to such decree or order, may apply to the court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose, and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof; and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Trader having Privilege of Parliament, disobeying Order of any Court of Equity, or in Bankruptcy or Lunacy, for Payment of Money after Service and peremptory Day fixed, an Act of Bankruptcy.

XII. And be it enacted, That the Lord Chancellor may, upon petition made to him in writing, against any such trader having committed any act of bankruptcy, by any creditor or creditors of such trader, by commission under the great seal, appoint such persons as to him shall seem fit, who shall by virtue thereof have the powers and authorities herein-after mentioned; and such petitioning creditor or creditors shall, before any commission be granted make an affidavit in writing before a

Power to the Lord Chancellor to issue a Commission.

Petitioning Creditor shall make Oath of his Debt: and give Bond to the Chancellor.

No. I. 5 Geo. IV, c. 98.

Master Ordinary or Extraordinary in Chancery (which shall be filed with the proper officer) of the truth of such his or their respective debt or debts, and shall likewise give bond to the Lord Chancellor, in the penalty of two hundred pounds, to be conditioned for proving his or their debt or debts, as well before the Commissioners as upon any trial at law, in case the due issuing forth of the commission be contested, and also for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed on such commission; but if such debt or debts shall not be really due, or if after such commission taken out, it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall appear that such commission was taken out fraudulently or maliciously, the Lord Chancellor may, upon petition of the party or parties grieved, order satisfaction to be made to him or them for the damages by him or them sustained, and for the better recovery thereof, may assign such bond or bonds to the party or parties so petitioning, who may sue for the same in his and their name or names.

Petitioning Creditor to prosecute Commission at his own Costs until Choice of Assignees; and to be reimbursed after such Choice. Bills of Costs to be taxed by Commissioners, unless they contain Law Proceedings.

XIII. And be it enacted, That the petitioning creditor or creditors shall at his or their own costs, sue forth and prosecute the commission until the choice of assignees, and the Commissioners shall, at the meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees (who are hereby thereto required) to reimburse such petitioning creditor or creditors such costs out of the first money that shall be got in under the commission; and all bills of fees or disbursements of any solicitor or attorney employed under any commission shall be settled by the Commissioners, provided such bills do not contain any charge respecting any action at law or suit in equity, in which case the same shall be settled by the proper officer of the court in which the business contained in such bill, or the greatest part in amount or value thereof shall have been transacted; and the same so settled shall be paid by the assignees to such solicitor or attorney, provided that any creditor who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the Commissioners, may have the same settled by a Master in Chancery, who shall receive for such settlement, and the certificate thereof, twenty shillings.

Amount of Petitioning Creditor's Debt. A Debt not payable at the Time to be a sufficient Foundation for a Commission, although no Security given.

XIV. And be it enacted, That no such commission shall be issued unless the single debt of such creditor, or of two or more persons being partners petitioning for the same, shall amount to one hundred pounds or upwards; or unless the debt of two creditors so petitioning shall amount to one hundred and fifty pounds or upwards; or unless the debt of three or more creditors so petitioning shall amount to two hundred pounds or upwards; and that every person who has given credit to any trader upon valuable consideration for any sum which shall not have become payable at the time such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security for such sum or not.

Joint Commissions may be issued against Partners in a Firm.

XV. And be it enacted, That any creditor or creditors whose debt or debts is or are sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners of such firm; and every commission issued upon such petition shall be valid, although it does not include all the partners of the firm; and in every commission against two or more persons, the Lord Chancellor may supersede such commission as to one or more of such persons: and the validity of such commission shall not be thereby affected, as to any person as to whom such commission is not ordered to be superseded, nor shall any such person's certificate be thereby affected.

In Cases of a Second or other Commission being issued, Lord Chancellor may direct that such Commissions be proceeded in separately or in conjunction.

XVI. And be it enacted, That if after a commission issued against two or more members of a firm, any other commission or commissions shall be issued against any other member or members of such firm, such other commission or commissions shall be directed to the Commissioners to

No. I. 5 Geo. IV. c. 98.

whom the first commission was directed; and immediately after the adjudication under such other commission or commissions, all the estate, real and personal, of such bankrupt or bankrupts, shall, in case assignees have been chosen, vest in such assignees, and all separate proceedings under such other commission or commissions shall be stayed, and such commission or commissions shall, without affecting the validity of the first commission, be annexed to and form part of the same; provided that the Lord Chancellor may direct that such other commission or commissions be issued to any other Commissioners, or that such other commission or commissions shall proceed either separately or in conjunction with the first commission.

Proceeding in case Petitioning Creditor's Debt be insufficient to support Commission.

XVII. And be it enacted, That if after adjudication the debt or debts of the petitioning creditor or creditors, or any of them, be found insufficient to support a commission, the Lord Chancellor may, upon the application of any other creditor or creditors, having proved any debt or debts sufficient to support a commission, order the said commission to be proceeded in, and it shall by such order be deemed valid.

Commission not invalid by reason of Act of Bankruptcy prior to Petitioning Creditor's Debt.

XVIII. And be it enacted, That no commission shall be deemed invalid by reason of any act or acts of bankruptcy prior to the debt or debts of the petitioning creditor or creditors, or any of them; provided there be a sufficient act of bankruptcy subsequent to such debt or debts.

Auxiliary Commissions.

XIX. And be it enacted, That the Lord Chancellor may direct an auxiliary commission to issue for proof of debts under twenty pounds, and for the examination of witnesses, or for either of such purposes; and every such commission heretofore issued is hereby declared valid; and the Commissioners in every such commission issued for the examination of witnesses, shall possess the same powers to compel the attendance of, and to examine witnesses, and to enforce obedience to such examination, as are possessed by the Commissioners in any original commission.

Commissioner's Oath.

XX. And be it enacted, That no Commissioner shall be capable of acting in the execution of any of the powers and authorities given by this Act (except the power hereby given of administering the oath next herein-after mentioned), until he shall have taken an oath in the presence of one or more of the said Commissioners, to the effect following (that is to say);

'I *A. B.* do swear, That I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a Commissioner, in a commission of bankruptcy against and that without favour or affection, prejudice or malice. So help me GOD.'

How administered, and a Memorial thereof to be entered on the Proceedings.

Which oath the Commissioners are hereby empowered and required to administer one to another, in the same commission named; and they shall enter and keep a memorial or memorials thereof, signed by them respectively, among the proceedings under each commission.

Commissioner's Fees.

XXI. And be it enacted, That the said Commissioners shall receive and be paid the fee of twenty shillings each Commissioner for every meeting, and the like sum for their certificate of the choice of assignees, and for the signature of the bankrupt's certificate; and where any commission shall be executed in the country, every Commissioner, being a barrister at law, shall receive a further fee of twenty shillings for each meeting; and in case his usual place of residence is distant seven miles or upwards from the place where such meetings are holden, and he shall travel such distance to any such meeting, he may receive a further sum of twenty shillings for every such meeting; and every Commissioner who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expense to be made, shall be disabled for ever from acting in such or any other commission.

Barristers to be acting Commissioners in Meetings under any Commission in the Country; and entitled to Fees.

XXII. And be it further enacted, That at every meeting under any commission to be executed in the country, wherein any one or more of

No. I. 5 Geo. IV. c. 98.

the Commissioners named may be a barrister or barristers, such barrister or barristers, or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting Commissioner or Commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other Commissioners in the said commission named.

No Postponement of Meetings to another Hour of the same Day to entitle to Fees, unless they sit for Two Hours.

XXIII. And be it further enacted, That no postponement or continuance of any public or private meeting to another hour of the same day, where the parties are ready to proceed, shall entitle the Commissioners to any further fees, unless such meeting shall have been sitting for the space of two hours at the least.

Commissioners before Adjudication may summon Persons to give Evidence of Trading and Act of Bankruptcy.

XXIV. And be it enacted, That the Commissioners, after they have taken such oath as aforesaid, may, by writing under their hands, summon before them any person whom they shall believe capable of giving any information concerning the trading of, or any act or acts of bankruptcy committed by the person or persons against whom such commission is issued, and may also require any person so summoned to produce any books, papers, deeds, and writings, and other documents, in the custody possession or power of such person, which may appear to the said Commissioners to be necessary to establish such trading, or act or acts of bankruptcy; and every such person so summoned shall incur such danger or penalty for not coming before the Commissioners, or for refusing to be sworn and examined, or for not disclosing the truth, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy; and the Commissioners, upon proof made before them of the petitioning creditor's debt or debts, and of the trading, and act or acts of bankruptcy of the person or persons against whom such commission is issued, shall thereupon adjudge such person or persons bankrupt.

Adjudication.

Commissioners to appoint Meetings, and to give Notice in the London Gazette.

XXV. And be it enacted, That the Commissioners, after they have so adjudged as aforesaid, shall forthwith cause notice of such adjudication to be given in the *London Gazette*, and shall appoint three public meetings for the bankrupt to surrender and conform; the last of which meetings shall be on the forty-second day hereby limited for such surrender.

Commissions not to abate by Death of the King.

XXVI. And be it enacted, That no commission shall abate by reason of a demise of the crown; and (if, by reason of the death of Commissioners, or for any other cause, it become necessary) any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same; and if any bankrupt shall die after adjudication, the Commissioners may proceed in the commission as they might have done if he were living.

May be renewed, for Death of Commissioners; to proceed if Bankrupt die.

Messenger may break open the Bankrupt's Doors, &c. and seize upon his Body or Property.

XXVII. And be it enacted, That any person appointed by the Commissioners, by their warrant under their hands and seals, may break open any house, chamber, shop, warehouse, door, trunk, or chest of any bankrupt, where such bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, the person so appointed as aforesaid may seize any property (his necessary wearing apparel only excepted) in the custody or possession of such bankrupt, or of any other person, in any prison.

Messenger may seize Goods in Ireland.

XXVIII. And be it enacted, That the person so appointed by the Commissioners as aforesaid may break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, in *Ireland*, where any of the property of such bankrupt shall be reputed to be, and seize the same: Provided such warrant as aforesaid shall have been verified upon oath, by the attorney or solicitor suing out the commission, before the mayor or other chief magistrate of the city borough or town corporate where or near to which the said commission is executed, and verified under the common seal thereof, or the seal of the office of such mayor

or other magistrate; and provided also, that the person thereby appointed shall, before a Justice of Peace residing in the county where such property shall be reputed to be, depose upon oath that he is the person named in such warrant.

Messenger may obtain Search Warrant, where Property of the Bankrupt is sworn to be concealed.

XXIX. And be it enacted, That in all cases where it shall be made to appear to the satisfaction of any Justice of Peace in *England* or *Ireland*, that there is reason to suspect and believe that property of the bankrupt is concealed in any house premises or other place not belonging to such bankrupt; such Justice of Peace is hereby authorized to grant a search warrant to the person so deputed by the Commissioners as aforesaid, who may execute the same in like manner, and shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen and concealed.

Execution of such Warrant in Scotland.

XXX. And be it further enacted, That if, in the execution of such warrant as aforesaid, it shall be necessary to have access to any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, in *Scotland*, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property, such warrant, after having been verified upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or Justice of the Peace in *Scotland*, who are hereby required within their respective jurisdictions to back or indorse the same; and such warrant so indorsed shall be sufficient authority to the person bringing such warrant, and to all officers of the law in *Scotland*, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, and to seize and take possession thereof, to be distributed under the said commission, or otherwise dealt with according to law.

Of Actions against Persons acting in obedience to Warrant of Commissioners.

XXXI. And be it enacted, That no action shall be brought against any person so appointed by the Commissioners for any thing done in obedience to their warrant, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person or persons, by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand and compliance therewith any action be brought against the person so appointed as aforesaid, without making the petitioning creditor or creditors defendant or defendants, if living, on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Commissioners; and if such action be brought against the petitioning creditor or creditors, and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed as aforesaid, notwithstanding any such defect of jurisdiction as aforesaid; and if the verdict shall be given against the petitioning creditor or creditors, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the plaintiff or plaintiffs are liable to pay to the person so appointed as aforesaid.

Proof in such Actions that Defendants are Petitioning Creditors renders them liable.

XXXII. And be it further enacted, That in any such action so brought as aforesaid against the petitioning creditor or creditors, either alone or jointly with the person so appointed by the Commissioners as aforesaid, for any thing done in obedience to their warrant, proof by the plaintiff or plaintiffs in such action that the defendant or defendants, or any of them, are petitioning creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

Commissioners empowered to summon Persons suspected of having Bankrupt's Property in their Hands, and all Persons who can give Information, &c.; and compel them to produce Books, &c.

XXXIII. And be it enacted, That after adjudication the Commissioners may, by writing under their hands, summon before them any

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person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to such bankrupt; and also any person whom the Commissioners believe capable of giving information concerning any part of the bankrupt's estate, or any fictious debt, or any spurious book or document, or other transactions material to the full disclosure of the dealings of the bankrupt; and may also require such person to produce any books, papers, deeds, and writings, and other documents in his custody or power, which may appear to the Commissioners necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the Commissioners are authorized to inquire into; and if such person so summoned as aforesaid shall not come before the Commissioners at the time appointed, having no lawful impediment (made known to the said Commissioners at the time of their meeting, and allowed by them) the said Commissioners may, by warrant under their hands and seals, the person or persons therein named for that purpose, to apprehend and arrest such person, and bring him before them to be examined as aforesaid.

Persons refusing to attend may be apprehended.

Persons refusing to be examined, or to produce Books, may be committed.

XXXIV. And be it enacted, That upon the appearance of any person so summoned as aforesaid, or if any person be present at any meeting of the Commissioners, it shall be lawful for them to examine every such person either by word of mouth or by interrogatories in writing concerning any of the matters which the said Commissioners are hereby authorized to inquire into, and to reduce into writing the answers of every such person, and such answers so reduced into writing the party examined is hereby required to sign and subscribe; and if any such person shall refuse to be sworn, or, being one of the people called *Quakers*, to make solemn affirmation, or shall refuse to answer any lawful questions put to him by the said Commissioners touching the matters aforesaid, or shall not fully answer, to the satisfaction of the said Commissioners, any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid (not having any objection allowed by the said Commissioners), or shall not produce any books, papers, deeds, and writings, and other documents, in his custody or power, relating to any of the matters aforesaid, which such person was required by the Commissioners to produce, and to the production of which he shall not state any objection allowed by the said Commissioners, it shall be lawful for them, by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain without bail until he shall submit himself to them to be sworn or make affirmation as aforesaid, and full answers make, to their satisfaction, to all such lawful questions as shall be put to him, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid, in his custody or power, to the production of which no such objection as aforesaid has been allowed.

Witnesses to have their Expenses.

XXXV. And be it further enacted, That where any witness is summoned to attend before the Commissioners at any meeting appointed prior to the adjudication, his necessary expences shall be tendered to every such witness, in like manner as is now by law required upon service of a subpœna to a witness in any action at law; and where any witness is summoned to attend before the said Commissioners at any other meeting, every such witness shall have such costs and charges as the said Commissioners in their discretion shall think fit.

Commissioners may summon Bankrupt;

XXXVI. And be it enacted, That the Commissioners may, by writing under their hands, summon any bankrupt before them, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time by them appointed, having no lawful impediment, made known to them at such time, and allowed by them, the said Commissioners may, by warrant under their hands and seals, authorize any person or persons they shall think fit to arrest such bankrupt and bring him before them; and upon the appearance of such bankrupt, or if such bankrupt be present at any meeting of the said Commissioners, it shall be lawful for them to examine such bankrupt upon oath, either by word

Power to examine the Bankrupt.

of mouth or on interrogatories in writing, touching all matters relating either to his trade dealings or estate, and to reduce his answers into writing, which examination so reduced into writing the said bankrupt shall sign and subscribe; and if such bankrupt shall refuse to be sworn, or to answer any questions put to him by the Commissioners, touching any of the matters aforesaid, or to sign and subscribe his examination so reduced into writing as aforesaid (not having an objection allowed by the said Commissioners), they may, by warrant under their hands and seals, commit him to such prison as they shall think fit, there to remain without bail until he shall submit himself to the said Commissioners to be sworn, and full answer make, to their satisfaction, to such questions as shall be put to him, and sign and subscribe such examination.

Bankrupt refusing to be sworn, or answer or subscribe his Examination, to be imprisoned.

XXXVII. And be it enacted, That the Commissioners may summon before them the wife of any bankrupt, and examine her as to the estate and effects of such bankrupt; and she shall incur such danger or penalty for not coming before the Commissioners, or for refusing to be sworn and examined, or to sign or subscribe her examination, or for not disclosing the truth, as is hereby provided against other persons.

Commissioners may summon and examine the Bankrupt's Wife.

XXXVIII. And be it enacted, That if any gaoler to whose custody any bankrupt or other person shall be committed as aforesaid, shall suffer such bankrupt or other person to escape, every such gaoler shall forfeit five hundred pounds; and every such gaoler shall, upon the request of any creditor who shall have proved under the commission, and who shall produce a certificate thereof under the hands of the Commissioners (which they shall give *gratis*), forthwith produce any person so committed to such creditor; and if such gaoler shall not produce such person to such creditor, he shall forfeit one hundred pounds.

Penalty on Gaoler for Escape 500*l.* and for refusing to produce his Prisoner to a Creditor, 100*l.*

XXXIX. And be it enacted, That if any person be committed by the Commissioners for refusing to answer, or not fully answering any question put to him by the said Commissioners, they shall, in their warrant of commitment, specify every such question: Provided, that if any person committed by the Commissioners shall bring any *habeas corpus*, in order to be discharged from such commitment, and there shall appear on the return of such *habeas corpus* any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, the court or judge before whom such party shall be brought by *habeas corpus*, shall re-commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such court or judge, by the party committed, that he has fully answered all lawful questions put to him by the Commissioners, or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to any court or judge, that he had a sufficient reason for the same: Provided also, that such court or judge shall, if required thereto by the party committed, inspect and consider the whole of the examination of such party whereof any such question was a part, and if it shall appear from the whole examination that the answer or answers of the party committed is or are satisfactory, such court or judge may order the party so committed to be discharged.

Questions to be particularly specified on Warrant.

If Habeas Corpus be brought on such Commitment, the Judge may re-commit the Prisoner.

Court or Judge may look at the whole of the Examination.

XL. And be it enacted, That in every action, in respect of any such commitment, brought by any bankrupt or other person so committed, the court or judge before which or whom such action is tried, shall, if thereto required by the defendant or defendants in such action, in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of such examination; and if upon such inspection and consideration it shall appear to such court or judge that the party was lawfully committed, the defendant or defendants in such action shall have the same benefit therefrom as if the whole of such examination had been therein stated.

In Actions of false Imprisonment, the Court may look at the whole of the Examination of the Party committed.

XLI. And be it enacted, That no writ shall be sued out against, nor copy of any process served on any Commissioner, for any thing by him done as such Commissioner, unless notice in writing of such intended writ or process shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party intending to sue or cause

No Writ to be sued out against any Commissioner in less than a Month after Notice given.

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the same to be sued out or served, at least one calendar month before the suing out or serving the same; and such notice shall set forth the cause of action which such party has or claims to have against such Commissioner; and on the back of such notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall receive no more than twenty shillings for preparing and serving such notice.

Plaintiff shall not recover unless Notice proved, and no Evidence shall be given of any thing not contained in the Notice.

XLII. And be it enacted, That no such plaintiff shall recover any verdict against such Commissioner in any case where the action shall be grounded on any act of the defendant as Commissioner, unless it is proved upon the trial of such action that such notice was given as aforesaid, but in default thereof such Commissioner shall recover a verdict and costs as aforesaid; and no evidence shall be permitted to be given by the plaintiff on the trial of any such action, of any cause of action, except such as is contained in the notice.

Tender of Amends within One Month after Notice, and pleaded in bar, &c.

XLIII. And be it enacted, That every such Commissioner may, at any time within one calendar month after such notice, tender amends to the party complaining, or to his agent or attorney, and if the same is not accepted, may plead such tender in bar to any action brought against him grounded on such writ or process, together with the plea of not guilty, and any other plea with leave of the court; and if, upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and if the plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such defendant upon demurrer, such Commissioner shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; and if upon issue so joined the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover, together with costs of suit: Provided that if any such Commissioner shall neglect to tender any amends, or shall have tendered insufficient amends before the action brought, he may, by leave of the court where such action shall depend, at any time before issue joined, pay into court such sum of money as he shall think fit, whereupon such proceedings shall be had in court, as in other actions, where the defendant is allowed to pay money into court.

Amends may be paid into Court before Issue joined.

Limitation of Actions.

XLIV. And be it enacted, That every action brought against any person for any thing done in pursuance of this Act, shall be commenced within three calendar months next after the fact committed; and the defendant or defendants in any such action may plead the general issue, and give this Act and the special matter in evidence at the trial, and that the same was done by authority of this Act; and if it shall appear so to have been done or that such action was commenced after the time before limited for bringing the same, or brought in any other county than as aforesaid, the jury shall find for the defendant or defendants, and if there be a verdict for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or discontinued his or their action or suit after appearance thereto; or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover double costs.

General Issue.

Double Costs.

Commissioners may appoint Assignees until others are chosen by Creditors.

XLV. And be it enacted, That the Commissioners may by writing under their hands appoint one or more person or persons an assignee or assignees of the bankrupt's real and personal estate, or of any part thereof which shall by such writing be vested in such assignee or assignees, without any conveyance or deed of assignment until the choice of assignees by the creditors; and upon such choice, the consent in writing of the assignees so chosen to accept the assignment of the bankrupt's estate, when verified by the Commissioners, shall divest such estate out of the assignee or assignees so appointed by the Commissioners; and every such assignee so appointed by the Commissioners shall deliver up all the estate of the bankrupt come to his possession to the assignees so chosen as herein-after mentioned; and if such first assignee or assignees

shall not within ten days after notice given of the said choice of assignees and of their consent to accept such assignment, signified to the first assignee or assignees by writing under their hands, make such delivery as aforesaid, every such first assignee shall forfeit two hundred pounds.

Penalty on first Assignee for not delivering the Effects to the new ones, 200*l.*

XLVI. And be it enacted, That at the three several meetings so appointed by the Commissioners as aforesaid, and at every other meeting by them appointed for proof of debts whereof, and of the purport whereof ten days notice shall have been given in the *London Gazette*, every creditor of the bankrupt may prove his debt by his own oath; and that all bodies corporate and public companies may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorized to make such proof; and if any creditor shall live remote from the place of meeting of the Commissioners, he may prove by affidavit sworn before a Master in Chancery, ordinary or extraordinary, or if such creditor shall live out of *England*, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a notary public; and no creditor shall pay any contribution on account of any such debt: Provided that it shall be lawful for the said Commissioners to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under the said commission, or to require such further proof and examine such other persons in relation thereto, as they shall think fit.

Debts how to be proved.

Creditor may be examined upon Oath.

XLVII. And be it enacted, That every person with whom any bankrupt shall have really and *bonâ fide* contracted any debt or demand before the issuing the commission against him shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission, as if no such act of bankruptcy had been committed; provided such person had not, at the time the same was contracted, notice (either actual or constructive) of any act of bankruptcy by such bankrupt committed, or that he had stopped payment.

Bonâ fide Creditors shall be admitted to prove, notwithstanding any secret Act of Bankruptcy.

XLVIII. And be it enacted, That where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the Commissioners shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made proveable against the estate of the bankrupt, may also be set off in manner aforesaid against such estate; provided, that where there has been such prior act of bankruptcy, such credit was given to the bankrupt two calendar months before the date and suing forth of the commission; and that the person claiming the benefit of such set-off had not, when such credit was given, any notice either actual or constructive of an act of bankruptcy by such bankrupt committed, or that he had stopped payment.

Mutual Debts and Credits may be set off, notwithstanding a secret Act of Bankruptcy.

XLIX. And be it enacted, That any person who shall have given credit to the bankrupt upon valuable consideration, for any money which shall not have become payable when such bankrupt committed an act of bankruptcy, may prove such debt as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five *per cent.*, to be computed from the declaration of a dividend, to the time such debt would have become payable according to the terms upon which it was contracted.

Debts not payable at the Time of the Bankruptcy may be proved, deducting Rebate of Interest.

L. And be it enacted, That any person who at the issuing the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, may, if he shall have paid the debt, or any part thereof in discharge of the whole debt, (although he may have paid the same after the commission issued) if after having paid such Debts,

Sureties and Persons liable for the Debts of Bankrupts may prove,

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the creditor shall have proved his debt under the commission, stand in the place of such creditor as to the dividends upon such proof; or if the creditor shall not have proved under the commission, may prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors although he may have become surety bail or liable as aforesaid, after an act of bankruptcy committed by such bankrupt; provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice either actual or constructive of any act of bankruptcy by such bankrupt committed, or that he had stopped payment.

Obligee in Bottomry or Respondentia Bonds, and assured in Policy of Insurance, admitted to claim; and after Loss to prove.

LI. And be it enacted, That the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim; and after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors, as if the loss or contingency had happened before the issuing the commission against such obligor or insurer; and that the person effecting any policy of insurance upon ships or goods with any person as a subscriber or underwriter becoming bankrupt, may prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the United Realm.

Person effecting Insurance admitted to prove Loss, although he is not beneficially interested.

Annuity Creditor admitted to prove.

Value of Annuity how ascertained.

LII. And be it enacted, That any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, may prove for the value of such annuity; which value the Commissioners shall ascertain with reference to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission.

Sureties for Payment of Annuities granted by Bankrupt, in what Manner to come in under the Commission.

LIII. And be it enacted, That it shall not be lawful for any person entitled to annuity granted by any bankrupt to sue any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity and for the arrears thereof; and if such surety after such proof, pay the amount proved as aforesaid, he shall thereby be discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have been paid or satisfied the amount so proved, with interest thereon at the rate of four *per cent. per annum* from the time of notice of such proof, and of the amount thereof, being given to such surety; and after such payment or satisfaction such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant or of such surety in respect of such annuity: Provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission before such surety shall have fully paid or satisfied the amount so proved as aforesaid.

Debts contingent at the Time of the Bankruptcy to be provable after the happening of the Contingency.

LIV. And be it enacted, That if any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the Commissioners to set a value upon such debt, who are hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon, or if such value shall not be so ascertained before

the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice either actual or constructive of any act of bankruptcy by such bankrupt committed, or that he was insolvent or had stopped payment.

Interest on Promissory Notes and Bills of Exchange provable.

'LV. And be it enacted, That in all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved overdue at the issuing the commission, the holder of such bill of exchange or promissory note may prove for interest upon the same, to be calculated by the Commissioners to the date of the commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes.

Plaintiff obtaining Judgment, &c. entitled to prove for Costs, although not taxed at the Time of the Bankruptcy.

LVI. And be it enacted, That if any plaintiff in any action at law, or suit in equity or petitioner in bankruptcy or lunacy, shall have obtained any judgment, decree or order against any person who shall thereafter become bankrupt, for any debt or demand in respect of which such plaintiff or petitioner shall prove under the commission, he may also prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankruptcy.

Proving a Debt under a Commission to be an Election not to proceed against the Bankrupt by Action.

LVII. And be it enacted, That no creditor who has brought any action, or instituted any suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit; and the proving or claiming a debt under a commission by any creditor, shall be deemed an election by such creditor to take the benefit of such commission with respect to the debt so proved or claimed: Provided, that such creditor shall not be liable to the payment to such bankrupt or his assignees of the costs of such action or suit so relinquished by him, and that where any such creditor shall have brought any action or suit against such bankrupt jointly with any other person or persons, his relinquishing such action or suit against the bankrupt shall not affect such action or suit against such other person or persons: Provided, that any creditor who shall have so elected to prove or claim as aforesaid, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*, if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail by requiring the bail below to put in and perfect bail above, within the first eight days in term after notice in the *London Gazette* of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken.

Creditor having elected to come in under the Commission, if it be afterwards superseded, restored to his former Rights.

Commissioners may expunge Proof of Debts.

LVIII. And be it enacted, That whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the commission is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the Commissioners, who may summon before them and examine upon oath any person who shall have so proved as aforesaid, together with any person whose evidence may appear to the Commissioners to be material either in support of or in opposition to any such debt; and if the said Commissioners, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors as aforesaid, shall be of opinion that such debt is not due either wholly or in part, the said Commissioners may expunge the same, either wholly or in part, from the proceedings: Provided, that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking to be filed with the proceedings, to pay such costs as the Commissioners shall adjudge, to the creditor who has proved such debt as aforesaid; such costs

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to be recovered by petition: Provided also, that such assignees or creditors may apply, in the first instance, by petition to the Lord Chancellor, or that either party may petition against the determination of the Commissioners.

Choice of Assignees at Second Meeting; how chosen.

LIX. And be it enacted, That at the second meeting appointed by the Commissioners as aforesaid, assignees of the bankrupt's estate and effects shall be chosen; and all creditors who have proved debts under the commission to the amount of ten pounds and upwards, and joint creditors of two or more persons being partners, who have proved debts to such amount in any commission against one or more of such partners, may vote in such choice; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a Master in Chancery, ordinary or extraordinary, or by oath before the Commissioners *vivâ voce*, and in case of creditors residing out of *England*, by oath before a magistrate where the party shall be residing, duly attested by a notary public.

Commissioners may reject any Person chosen Assignee as unfit.

LX. Provided always, and be it further enacted, That the Commissioners shall have power to reject any person so chosen, who shall appear to them for any reason unfit for the office of assignee as aforesaid.

Estate of Bankrupt Real and Personal vested in Assignees for Benefit of Creditors.

LXI. And be it enacted, That upon such choice being made, a certificate or declaration shall be signed by the Commissioners, and such certificate or declaration shall immediately vest the whole of such bankrupt's real and personal estate, both within the United Kingdom and abroad, except copyhold and customary lands, and all such estate as aforesaid which he may purchase, or which may revert, descend, be devised, or come to him before he shall have obtained his certificate of conformity, and all debts due or to be due to the bankrupt, in such assignee or assignees, for the benefit of the creditors who shall have proved under the said commission, as fully and with the same rights and powers, both of alienating or recovering the same, as such bankrupt possessed; provided that such certificate or declaration of the choice of assignees be entered of record, within two months from the signature thereof, in the office of the Register of proceedings in bankruptcy.

Lord Chancellor may, upon Petition, remove Assignees.

LXII. And be it enacted, That the Lord Chancellor may, upon petition, direct the removal of any assignee or assignees so chosen as aforesaid, and the creditors shall thereupon proceed in manner aforesaid to the choice of a new assignee or assignees; and the certificate or declaration of such choice of a new assignee or assignees, signed by the Commissioners as aforesaid, shall vest the whole of such bankrupt's real and personal estate in such new assignee or assignees, either solely, or jointly with any assignee or assignees who shall not have been removed; provided that the order for the removal of such assignee or assignees, and the certificate or declaration of the choice of a new assignee or assignees as aforesaid, be both entered of record in manner aforesaid.

Suits not to be abated by Removal of Assignees.

LXIII. And be it enacted, That whenever a new assignee or assignees shall be chosen as aforesaid, no action at law or suit in equity shall be thereby abated; but the court in which any action or suit is depending may, upon the suggestion of such removal and new choice, allow the name of such new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the same.

Assignees may make Sale of Copyhold Lands for the Benefit of Creditors.

LXIV. And be it enacted, That the assignees may, by deed indented and enrolled in any of His Majesty's courts of record, make sale for the benefit of the creditors of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby entitle or authorize any person or persons on their behalf to surrender the same, at any court at which the same may be lawfully surrendered, for the purpose of any purchaser or purchasers being admitted thereto.

Vendees of Copyhold Lands shall compound with the Lord for their Fines.

LXV. And be it enacted, That every person to whom any sale of copyhold or customary lands or tenements shall be made by the assig-

nees, shall, before he enter or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden, for such fines dues and other services as theretofore have been usually paid for the same; and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements, for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents customs and services, and shall admit him tenant of the same.

Assignees may make Sale of Hereditaments whereof the Bankrupt is seised of any Estate Tail, &c.

LXVI. And be it enacted, That the assignees may, by deed indented and enrolled as aforesaid, make sale, for the benefit of the creditors, of any hereditaments situated in *England* or *Ireland*, whereof the bankrupt is seised of any estate tail in possession reversion or remainder; and every such deed shall be good against the bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt, by fine, common recovery, or other means, might cut off or debar from any remainder reversion or other interest in or out of any of the said hereditaments.

Conditional Estates granted by the Bankrupt may be redeemed.

LXVII. And be it enacted, That if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time for the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done; and after such tender payment or performance, may sell and dispose of such real or personal estate.

Sales to be free from Auction Duty.

LXVIII. And be it enacted, That all sales, either of the real or personal estate of bankrupts, or of such debts as aforesaid, shall be free from auction duty.

Commissioners may proceed when the Bankrupt by Fraud makes himself Accountant to the King.

LXIX. And be it enacted, That if any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person under pretence of his being an accountant of or debtor to the King, the Commissioners may examine upon oath whether the said debt was due to such debtor or accountant upon any contract originally made between such accountant and the bankrupt; and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person or persons, the Commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors under the commission; and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted, or assigned by the Commissioners, shall have and may recover the same against any person who shall detain the same.

Goods in the Possession Order or Disposition of the Bankrupt may be assigned by the Commissioners.

LXX. And be it enacted, That if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession order or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale alteration or disposition as owner, the Commissioners may sell and dispose of the same for the benefit of the creditors under the commission: Provided, that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment duly registered according to the provisions of an Act of Parliament made in the fourth year of His present Majesty, intituled *An Act for the registering of Vessels.*

Not to affect any Assignment of Vessels, or of any Share therein. 4 G. 4. c. 41.

Bankrupt conveying his Lands or Goods to others, or delivering Securities or transferring Debts into other Names, void.

LXXI. And be it enacted, That if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed assigned or transferred to any of his children, or any other person, any hereditaments, officers fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes or other securities, or have trans-

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ferred his debts to any other person or persons, or into any other person's name, the Commissioners may sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt, and such children and persons as aforesaid, and against all persons claiming under him.

Distress not to be available for more than Two Years Rent due; the Landlord to prove for the Residue.

LXXII. And be it enacted, That when any distress for rent shall be made and levied upon the goods or effects of any person becoming bankrupt, whether before or after the issuing of a commission (an act of bankruptcy having been previously committed), if there shall be two years rent or upwards due to the landlord or party making the distress, such distress shall not be in any manner available for more than two years rent accruing prior to the date of the commission; but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for the overplus of the rent due, and for which the distress shall not be available,

Bankrupts entitled to Leases or Agreements for Leases, when liable for Rent or Covenants.

LXXIII. And be it enacted, That any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent non-observance or non-performance of the conditions covenants or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor, or such person agreeing to grant a lease, within fourteen days after he shall have notice the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, may apply by petition to the Lord Chancellor, who may order them so to elect, and to deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises; or may make such other order therein as he shall think fit.

If Assignees decline to determine whether they will accept the Lease, the Lessor may petition.

Vendor of any Estate in Lands may compel Assignees to elect, whether they will abide by or decline the Agreement.

LXXIV. And be it enacted, That if any bankrupt shall have entered into any agreement for the purchase of any estate in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, may apply, by petition, to the Lord Chancellor, who may thereupon order them so to elect, and if they shall elect to abandon the same, may order them to deliver up the said agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as he shall think fit.

Assignees may execute Powers previously vested in Bankrupts.

LXXV. And be it enacted, That all powers vested in any bankrupt, which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same.

Lord Chancellor may order Bankrupts to join in Conveyances.

LXXVI. And be it enacted, That the Lord Chancellor may, upon the petition of the assignees or any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity, order the bankrupt to join in any conveyance of such estate or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt, and all persons claiming under him, shall be estopped from objecting to the validity of such conveyance; and all estate right or title which such bankrupt had therein, shall be as effectually barred by such order, as if such conveyance had been executed by him.

Bankrupt holding Stock as Trustee, the Chancellor may order Conveyance or Assignment to other Trustees.

LXXVII. And be it enacted, That if any bankrupt shall have standing in his name as trustee, either alone or jointly, any Government stock funds or annuities, or any of the stock of any company within the United Realm, the Lord Chancellor may, on the petition of the person or persons entitled in possession to the receipt of the dividends thereof, on due notice given to all other persons (if any) interested therein, order the

assignees, and all persons whose act or consent thereto is necessary, to transfer the said stock funds or annuities to such person or persons as the Lord Chancellor shall think fit, upon the same trusts as the said stock funds or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the dividends thereof as the Lord Chancellor shall direct; and if any such bankrupt shall have any such stock funds or annuities standing in his name as aforesaid, in his own right, the Commissioners may, by writing under their hands, order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

Where Bankrupt beneficially entitled to Stock.

LXXVIII. And be it enacted, That all conveyances by, all payments by, and all contracts and other dealings and transactions by and with any bankrupt, *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him; and all executions attachments and distresses for rent against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution attachment or distress shall have issued or been levied, had not at the time of such conveyance, payment, contract, dealing, or transaction, or at the time of executing or levying such execution attachment or distress, notice, either actual or constructive, of any prior act of bankruptcy by him committed, or that he had stopped payment: Provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission within two calendar months next after it shall have been superseded, no such conveyance, payment, contract, dealing, or transaction, execution, attachment, or distress, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing of the first commission.

Conveyances, Payments, Contracts, Executions, and Attachments made or levied without Notice, &c. Two Months before the Commission, valid.

Where an invalid Commission has issued within the Two Months, which is afterwards superseded, under a new Commission, the Two Months shall be reckoned from the Date of the First Commission.

LXXIX. And be it enacted, That no person really and *bonâ fide* a creditor of any bankrupt shall be liable to repay to the assignees any money which before the issuing of the commission was really and *bonâ fide* received by such person of the bankrupt; provided such person had not at the time of receiving the same such notice as aforesaid.

Persons not liable to refund in respect of Payments before such Notice.

LXXX. And be it enacted, That the issuing of a commission shall be deemed notice of a prior act of bankruptcy, (if an act of bankruptcy has been actually committed before the issuing the commission) if the adjudication of the person or persons against whom such commission has issued shall have been notified in the *London Gazette*, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same.

What shall be constructive Notice.

LXXXI. And be it enacted, That no person or company having in his or their possession or custody any personal estate belonging to any bankrupt, nor any person indebted to such bankrupt, shall be endangered by reason of the delivery of any such personal estate, or the payment of any such debt to the bankrupt or his order; provided such person or company had not at the time of such delivery or payment actual notice that such bankrupt had committed an act of bankruptcy or had stopped payment.

Persons not to be endangered for Payment of Debts or Delivery of Goods without Notice.

LXXXII. And be it enacted, That if any accredited agent of any body corporate, or public company, shall have had notice either actual or constructive, of any act of bankruptcy or stoppage of payment, such body corporate or company shall be thereby deemed to have had such notice.

Bodies Politic, &c. deemed to have Notice, if Person acting on their behalf had Notice.

LXXXIII. And be it enacted, That no title to any real or personal property sold under Commission not to be impeached unless Commission be superseded, &c.

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estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same within twelve calendar months from the issuing thereof.

Assignees with Consent of Creditors, may compound or submit Disputes to Arbitration.

LXXXIV. And be it enacted, That the assignees with the consent of the major part in value of creditors, who shall have proved under the commission present at any meeting, whereof and of the purport whereof twenty-one days notice shall have been given in the *London Gazette*, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt; or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators, to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute; and the award shall be binding on all the creditors, and the assignees are hereby indemnified for what they shall do according to the directions aforesaid; and no suit in equity shall be commenced by the assignees without such consent as aforesaid; provided that if no creditor (except the assignees) shall attend at any such meeting whereof such notice shall have been given as aforesaid, the assignees shall have power, with the consent of the Commissioners testified in writing under their hands, to do any of the matters aforesaid, and the same shall be binding on all the creditors.

Assignees may not commence a Suit in Equity without Consent of Creditors.

Assignees of One or more Members of a Firm may use the Names of Partners in Suits.

LXXXV. And be it enacted, That in any commission against any one or more member or members of a firm, the Lord Chancellor may upon petition authorize the assignees to commence or prosecute any action at law or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment decree or order therein, as if such action or suit had been instituted with the consent of such partner or partners; and if such partner or partners shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void: Provided that every such partner if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit, and that the Lord Chancellor may, upon the petition of such partner, direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit.

Partners whose Names are so used in Suits to be indemnified, and receive Proceeds upon Petition.

In Actions by or against any Person acting under the Commission, no Proof required at the Trial of Petitioning Creditor's Debt, Trading and Act of Bankruptcy, unless Notice be given that those Matters are to be disputed.

LXXXVI. And be it enacted, That in any action by or against any assignee, or in any action against any Commissioner or person acting under the warrant of the Commissioners, for any thing done as such Commissioner, or under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, unless the other party in such action shall if defendant at or before pleading, and if plaintiff before issue joined, give notice in writing to such assignee Commissioner or other person that he intends to dispute some and which of such matters; and where such notice shall have been given, if such assignee Commissioner or other person shall prove the matter so disputed, or the other party admit the same, the Judge before whom the cause shall be tried may if he thinks fit grant a certificate of such proof or admission; and such assignee Commissioner or other person shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice; and such costs shall, if such assignee Commissioner or other person shall obtain a verdict be added to the costs; and if the other party shall obtain a verdict, shall be deducted from the costs, which such other party would otherwise be entitled to receive from such assignee Commissioner or other person.

The same in Suits in Equity.

LXXXVII. And be it enacted, That in all suits in equity by or against the assignees no proof shall be required at the trial of the petitioning creditor's debt or debts or of the trading or act or acts of bankruptcy respectively, as against any the parties in such suit, except such parties

as shall within ten days after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice to be taxed by the proper officer shall, if the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon the hearing of the cause.

Depositions conclusive in Actions or Suits by Assignees for any Debt of the Bankrupt, unless he dispute the Commission, &c.

LXXXVIII. And be it enacted, That if the bankrupt shall not, if he was within the United Kingdom at the issuing of the commission, within two calendar months after the adjudication, or (if he was out of the United Kingdom) within two calendar months after his return, have given notice of his intention to dispute the commission, and have proceeded therein with due diligence, the depositions taken before the Commissioners at the time of or previous to the adjudication of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law or suits in equity brought by the assignees, for any debt or demand for which the bankrupt might have sustained any action or suit.

Proviso for Debtor to the Estate paying the Debt into Court when sued by the Assignee before the Time for the Bankrupt's contesting the Commission is over.

LXXXIX. And be it enacted, That if the assignees commence any action or suit for any money so due to the bankrupt before the time allowed as aforesaid for him to dispute the commission shall have elapsed, any defendant in any such action or suit may, after notice given to the assignees, pay the same or any part thereof into the court in which such action or suit is brought; and all proceedings with respect to the money so paid into court shall thereupon be stayed, and after the time aforesaid shall have elapsed, the assignees shall have the same paid to them out of court.

If the Commission afterwards superseded, Persons from whom the Assignees have recovered, or bonâ fide paying the Assignees, &c. discharged from Claims by the Bankrupt.

XC. And be it enacted, That all persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the commission be afterwards superseded, from all demands which may hereafter be made in respect of the same, by the person or persons against whom such commission issued, and all persons claiming under him or them; and all persons who shall, without action or suit, *bonâ fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them; provided such notice to try the validity of the commission had not been given and been proceeded in within the time and in manner aforesaid.

Office for registering Proceedings in Bankruptcy.

XCI. And be it enacted, That all things done pursuant to the Act passed in the fifth year of King *George* the Second, and hereby repealed, whereby it was enacted, that the Lord Chancellor appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the Lord Chancellor may from time to time, by writing under his hand, appoint a proper person, who shall by himself, or his deputy, to be approved by the said Lord Chancellor, enter of record all matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the Lord Chancellor, on sufficient cause therein specified.

No Commission, Adjudication, Certificate, or Declaration shall be received in Evidence, unless entered of Record, for which Entry the Fees herein mentioned shall be paid.

XCII. And be it enacted, That in all commissions to be issued after the passing of this Act, no commission of bankruptcy, adjudication of bankruptcy by the Commissioners, certificate of declaration of choice of assignees, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of

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record as aforesaid shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, and certificate or declaration of choice of assignees, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of five shillings each, and for the entry of every certificate of conformity having the like certificate indorsed thereon, two shillings and sixpence; and every such instrument shall be so entered of record upon the application of or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions proceedings or other matter relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the Lord Chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid: Provided, that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid.

Office Copies made Evidence in certain Cases.

XCIII. And be it enacted, That in every action suit or issue, office copies of any original instrument or writing filed in the office, or officially in the possession of the Lord Chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary.

Punishment of Perjury and false Affirmation.

XCIV. And be it enacted, That any bankrupt or other person who shall in any examination before the Commissioners, or in any affidavit or deposition authorized or directed by the present or any Act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury: And where any oath is hereby directed to be taken or administered, or affidavit to be made, by or to any party, such party, if a Quaker, shall or may make solemn affirmation; and all Quakers who shall in any case knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made, are respectively empowered to administer the same, and also such solemn affirmation as aforesaid.

Application of Forfeitures.

XCV. And be it enacted, That all sums of money forfeited under this Act, or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees in any of His Majesty's Courts of Record; and the money so recovered, the charges of suit being deducted, shall be divided among the creditors; and if the creditors shall have been fully paid, one moiety of the surplus of such forfeitures shall be paid to the King, and the other be distributed amongst the poor of the parish where the bankrupt resided.

Application of the Forfeitures in case of a Surplus.

Assignees directed to keep a Book of Account of Bankrupt's Estate.

XCVI. And be it enacted, That the assignees shall keep an account, wherein they shall enter all property of the bankrupt received by them, and all payments made by them on account of the bankrupt's estate; which account every creditor who shall have proved may inspect at all seasonable times; and the Commissioners may at all times, by writing under their hands, summon the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents relating to the bankruptcy in their possession; and if such assignees so summoned shall not come before the Commissioners at the time appointed, having no impediment made known to the Commissioners at the time of their meeting, and allowed by them, the said Commissioners may, by warrant under their hands and seals, directed to such person as they shall think fit, cause such assignees to be arrested and brought before them, and upon their refusing to produce such books, deeds, writings, papers, or documents as aforesaid, the said Commissioners may commit

Commissioners may summon Assignees, &c.

the party so refusing to such prison as they shall think fit, there to remain without bail, until such assignees shall submit themselves to the said Commissioners.

Creditors to direct where the Money arising from the Bankrupt's Estate shall be paid in; or in Default of such Direction the Commissioners direct such Payment.

XCVII. And be it enacted, That at the meeting of creditors for the choice of assignees, that the major part in value of such creditors there present may direct how and with whom and where the money received from time to time out of the estate shall be paid in and remain until it be divided; and if such creditors shall not make such direction as aforesaid, the Commissioners shall, immediately after such choice and at the same meeting, make such direction; but no money shall be directed to be paid into the hands of any of the Commissioners, or of the solicitor to the commission, or into any banking-house or other house of trade in which any such Commissioner assignee or solicitor is interested.

Commissioners may direct the Money paid in on Bankrupt's Estate to be vested in Exchequer Bills.

XCVIII. And be it enacted, That the Commissioners may as often as it shall appear to them expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold, when it shall appear to them expedient, and may direct the proceeds thereof to be again laid out in the purchase of exchequer bills, or to be applied for the benefit of the creditors, subject to the control of the Lord Chancellor.

Assignee disobeying Direction to pay or invest Money, and retaining or employing it, or permitting Assignee to retain or employ it, to be charged with 20*l.* per Cent. upon the Money so retained or employed.

XCIX. And be it enacted, That if any assignee shall retain in his hands, or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ any sum to the amount of one hundred pounds or upwards, part of the estate of the bankrupt, or shall neglect to invest any money in the purchase of exchequer bills when so directed as aforesaid, every such assignee shall be liable to be charged in his accounts with such sum as shall be equal to interest, at the rate of twenty *per cent.* on all such money for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed as aforesaid, or during which he shall have so neglected to invest the same in the purchase of exchequer bills; and the Commissioners may charge every such assignee in his accounts accordingly.

If Assignee become Bankrupt, having Bankrupt's Estate wilfully retained and employed by him, his Certificate shall not discharge his future Effects in respect of it.

C. And be it enacted, That if any assignee indebted to the estate of which he is such assignee, in respect of money so retained or employed by him as aforesaid, become bankrupt, if he shall obtain his certificate, it shall only have the effect of freeing his person from arrest and imprisonment; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself his wife and children excepted), shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt.

Commissioners shall audit the Accounts of the Assignees within Six Months, and not earlier than Four Months after the last Examination.

CI. And be it enacted, That the Commissioners shall, at the meeting appointed for the last examination of the bankrupt, appoint a public meeting not sooner than four nor later than six calendar months therefrom, whereof and of the purport whereof they shall give twenty-one days notice in the *London Gazette*, to audit the accounts of the assignees; and the assignees at such meeting shall deliver upon oath a true statement in writing of all money received by them respectively, and when and on what account, and how the same have been employed; and the Commissioners shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained; and the said assignees may be examined upon oath by the said Commissioners touching the truth of such accounts; and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such commission, and all other just allowances.

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Method of making Dividends.

CII. And be it enacted, That the assignees shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof and of the purport whereof they shall give twenty-one days notice in the *London Gazette*), to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts may prove the same; and the said Commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as have proved debts under the commission, in proportion to their respective debts: and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver another part thereof to the assignees; which order shall contain an account of the time and place of making such order, of the amount of the debts proved, of the money remaining in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the Commissioners to be retained by the assignees, with their reasons for allowing the same to be so retained; and the assignees, in pursuance of such order (and without any deed of distribution made for that purpose) shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose from each creditor, for the dividend received by such creditor, and such order and receipt shall be a discharge to every such assignee, for so much as he shall pay pursuant to such order; and no dividend shall be declared unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid.

Creditors having Securities for their Debts, not to receive more than other Creditors.

CIII. And be it enacted, That no creditor having security for his debt, or having made any attachment in *London* or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy.

Joint Creditor not to take a Dividend of the separate Estate though Petitioning Creditor.

CIV. And be it enacted, That in all commissions against one or more of the partners of a firm (except in commissions against one of several partners issued previous to this Act) where the debt of the petitioning creditor is a joint debt of the bankrupt or bankrupts, and any other person or persons, such petitioning creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts, until all the separate creditors shall have received the full amount of their respective debts.

Final Dividend within 18 Months;

CV. And be it enacted, That if the bankrupt's estate shall not have been wholly divided upon the first dividend, the assignees shall, within eighteen calendar months after the issuing of the commission, appoint a public meeting, whereof, and of the purport whereof, they shall give twenty-one days notice in the *London Gazette*, to make a second dividend of the bankrupt's estate, when all creditors who have not proved their debts may prove the same; and the Commissioners at such meeting, after taking such audit as herein-before directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees; in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted, divide the same in manner aforesaid.

except where Suit depending, or Estate standing out, &c.

Assignees required to make Payment of unclaimed Dividends in manner herein mentioned.

CVI. And be it enacted, That if any assignee under any commission of bankrupt shall have either in his own hands or any bankers, or otherwise subject to his order or disposition, or to his knowledge, in the hands of or in the order and disposition of himself and any co-assignee or as-

signees, any or either of them, any unclaimed dividend or dividends amounting in the whole to the sum of fifty pounds, and shall not within six months after the passing of this Act, or two calendar months after the expiration of one year after the declaration and order of payment of such dividend or dividends made by the Commissioners, either pay to the creditor or creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's secretary of bankrupts, such assignee or assignees shall be charged in account, with the estate of the bankrupt, interest upon such unclaimed dividend or dividends, to be computed from the time that such certificate is hereby directed to be filed, at the rate of five pounds *per centum per annum* for such time as he shall henceforth retain the same, and also such further sum as the Commissioners shall think fit, not exceeding in the whole twenty pounds *per centum per annum*; and the Commissioners may order the investment of any unclaimed dividends in the public funds, or in any government security, for or on account of the creditors entitled and subject to such order as the Lord Chancellor may think fit to make respecting the same, who, if he shall think fit, may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the Commissioners, order the same to be divided amongst and paid to the other creditors, and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered as void as to the same, but renewable as to any future dividends to place them *pari passu* with the other creditors, but not to disturb any dividends which shall have been previously made.

No Action to be brought for Dividends, but the Remedy to be by Petition to the Lord Chancellor.

CVII. And be it enacted, That no action for any dividend shall be brought against the assignees by any creditor who shall have proved under the commission; but if the assignees shall refuse to pay any such dividend, the Lord Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application.

Bankrupt not surrendering and submitting to be examined; or not making Discovery of his Estate and Effects; or not delivering up his Goods, Books, &c.; or removing, concealing, or embezzling to the Value of 10*l.*; guilty of Felony, liable to be transported for Life, &c.

CVIII. And be it enacted, That if any bankrupt shall not, before three o'clock in the afternoon of the forty-second day after he shall have been declared bankrupt, notice thereof in writing having been first left at his usual place of abode, or served upon him in case he was in prison, and notice given in the *London Gazette*, of the issuing of the commission, and of the meetings of the Commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them from time to time upon oath, or being a Quaker, upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how, and to whom, upon what consideration, and when he disposed of assigned or transferred any of such estate, and all books papers and writings relating thereunto, except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family; or if any such bankrupt shall not upon such examination deliver up to the Commissioners all such part of such estate, and all books papers and writings relating thereunto, as be in his possession custody or power (except the necessary wearing apparel of himself his wife and children), or if any such bankrupt shall remove conceal or embezzle any part of such estate, to the value of ten pounds, or any books of account papers or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge; or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Lord Chancellor may enlarge the Time for Bankrupt surrendering himself.

CIX. And be it enacted, That the Lord Chancellor may, as often as he shall think fit, from time to time enlarge the time for the bankrupt surrendering himself, for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

No. I. 5 Geo. IV. c. 98.

Allowance to Bankrupt for Maintenance.

CX. And be it enacted, That the Commissioners before the choice of assignees, and after such choice the assignees, with the approbation of the Commissioners, testified in writing under their hands, may from time to time make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as the said assignees shall think necessary for the suppport of himself and his family.

Bankrupt apprehended to have the same Benefit on conforming,

CXI. And be it enacted, That if any bankrupt apprehended by any warrant of the Commissioners shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Bankrupt to deliver up his Books of Accounts to the Assignees upon Oath;

to attend Assignees;

to be at liberty to inspect Accounts;

after Allowance of Certificate to attend Assignees in settling Accounts.

Allowance for Attendance.

CXII. And be it enacted, That the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a master ordinary or extraordinary in Chancery, or Justice of the Peace, all books of account papers and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every such bankrupt, not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may at all seasonable times before the expiration of the said forty-two days, or such further time as shall be allowed to him to finish his examination, inspect his books papers and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him; and after he shall have obtained his certificate, shall upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate; for which attendance he shall be paid five shillings *per* day by the assignees out of his estate; and if such bankrupt shall, after such demand as aforesaid, not attend, or on such attendance, refuse to do any of the matters aforesaid, without sufficient cause shown to the Commissioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the Commissioners, the said Commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended, and committed to the county gaol, there to remain until he shall conform to the satisfaction of the said Commissioners, or of the Lord Chancellor.

Imprisonment on Non-attendance.

To be free from Arrest during Examination, if not in Custody before.

If arrested, to be discharged on producing Summons under the Hands of the Commissioners.

Penalty on Officer detaining Bankrupt.

CXIII. And be it enacted, That the bankrupt shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender be so arrested within the time aforesaid, he shall, on producing the summons under the hands of the Commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such summons to him, so signed as aforesaid, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at *Westminster*, in the name of such bankrupt, with full costs of suit.

Commissioners may adjourn last Examination of Bankrupt sine Die.

CXIV. And be it enacted, That the Commissioners may, at the time appointed for the last examination of the bankrupt, or any enlargement or adjournment thereof, adjourn such examination *sine die*; and he shall be free from arrest or imprisonment for such time not exceeding three calendar months, as they shall, by indorsement upon such summons as aforesaid, appoint, with like penalty upon any officer detaining such bankrupt after having been shown such summons.

CXV. And be it enacted, That whenever any bankrupt is in prison or in custody, under any process, attachment, execution, commitment, or sentence, the Commissioners may, by warrant under their hands directed to the person in whose custody such bankrupt is confined, cause such bankrupt to be brought before them at any meeting either public or private; and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expence thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the Commissioners for bringing up such bankrupt; provided that the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books papers and writings, in order to prepare an abstract of his accounts and statement, to show the particulars of his estate and effects previous to his final examination and discovery thereof, a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination.

Bankrupt in Custody to be brought before the Commissioners at the Creditor's Expense.

CXVI. And be it enacted, That any person wilfully concealing any real or personal estate of the bankrupt, and who shall not within forty-two days after the issuing of the commission discover such estate to one or more of the Commissioners or assignees, shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person who shall, after the time allowed to the bankrupt to surrender, voluntarily discover to one or more of the Commissioners or assignees any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five *per cent.* thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery.

Penalty on Persons concealing Bankrupt's Effects, 100*l.*, &c.

Allowance to Persons making Discovery thereof.

CXVII. And be it enacted, That every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity so signed and allowed, and subject to such provisions as herein-after directed; but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt.

Bankrupt discharged by Certificate of Conformity.

By Discharge of Bankrupt Partner not discharged.

CXVIII. And be it enacted, That such certificate shall be signed by four-fifths in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of twenty pounds or upwards, who shall thereby testify their consent to the bankrupt's discharge as aforesaid; and no such certificate shall be such discharge unless the Commissioners shall, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the creditors have signed in manner hereby directed; and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud; and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor.

Certificate to be signed by Four-fifths in Number and Value of Creditors above 20*l.*

Allowance by Lord Chancellor.

CXIX. Provided always, and be it enacted, That certificates of conformity which now have been or shall be signed by three-fifths in number and value of such creditors as aforesaid, of any bankrupt against whom any commission shall have issued before the time of passing this Act, may be signed by the Commissioners and allowed by the Lord Chancellor: Provided also, that after six calendar months from the last examination of any bankrupt under any commission issued after the passing of this Act such certificate may be signed by the Commissioners, and allowed in manner aforesaid, and shall be such discharge as afore-

In Cases of Bankruptcy before passing of this Act, Certificates signed by Three-fifths in Number and Value, allowed.

After Six Months from the last Examination, what Number necessary.

No. I. 5 Geo. IV. c. 98.

said, if it shall have been signed by three-fifths in number and value of creditors as aforesaid, or by nine-tenths in number of such creditors.

After eighteen Months from the last Examination, if signed by Three-fifths, with the Exception of one whose Signature is necessary either in Number or Value, or Nine-tenths in Number with such Exception, Certificate allowed.

CXX. Provided also, and be it further enacted, That after eighteen calendar months from the last examination of any bankrupt under a commission issued, either previously to or after the passing of this Act, if three-fifths in number and value of such creditors, with the exception of one whose signature is necessary in respect of number or value, or if nine-tenths in number with the exception of one whose signature is necessary to make up that proportion, shall have signed the certificate, the Commissioners may sign the same, and the bankrupt may thereupon petition the Lord Chancellor for the allowance thereof, having first caused every creditor who shall not have signed, and whose signature shall be so necessary as aforesaid, to be served with a copy of such petition, who may be heard against such allowance; and every such certificate, if allowed by the Lord Chancellor, shall be a valid discharge as aforesaid,

Proof of Signature of Creditors.

CXXI. And be it enacted, That the Commissioners shall not sign any certificate unless they shall have proof by affidavit in writing of the signature of the creditors thereto, and of any person thereto authorized by any creditor, and of the authority by which such person shall have so signed the same; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public; and every such affidavit authority and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof.

Contracts and Securities to induce Creditors to sign, void.

CXXII. And be it enacted, That any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this Act and the special matter in evidence.

Bankrupt having obtained his Certificate, free from Arrest.

Certificate Evidence of the Proceedings under the Commission.

Bankrupt in Execution may be ordered to be discharged.

CXXIII. And be it enacted, That any bankrupt who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt due by him before his bankruptcy, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence; and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution or detained in prison for any debt owing before he became bankrupt, where judgment has been obtained before the allowance of his certificate, any judge of the court wherein judgment has been so obtained may, on such bankrupt's producing his certificate, order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

Future Effects liable where Bankrupt has been Bankrupt before, or compounded or taken the Benefit of the Insolvent Act, unless 15*s.* in the Pound is paid.

CXXIV. And be it enacted, That if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors or who shall have been discharged by any Insolvent Act, shall become bankrupt and obtain such certificate as aforesaid, unless his estate shall produce after all charges, sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself his wife and children) shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing the commission.

CXXV. And be it enacted, That every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five *per cent.* out of such produce, to be paid him by the assignees, provided such allowance shall not exceed four hundred pounds; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds, ten shillings *per cent.*, provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound, shall be allowed and paid as aforesaid ten pounds *per cent.*, provided such allowance shall not exceed six hundred pounds; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and Commissioners shall think fit, not exceeding three pounds *per cent.*

Allowance to Bankrupt. 5 per Cent. if 10*s.* paid in the Pound; 7½ if 12*s.* 6*d.* 10 per Cent. if 15*s.*; if under 10*s.* not exceeding 3 per Cent.

CXXVI. And be it enacted, That in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate, and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance.

Partner may receive allowance though the others are not entitled.

CXXVII. And be it enacted, That no bankrupt shall be entitled to his certificate, or to be paid any such allowance, and that any certificate if obtained, shall be void, if such bankrupt shall have lost by any sort of gaming or wagering, in one day, twenty pounds, or within one year next preceding his bankruptcy, two hundred pounds; or if he shall within one year next preceding his bankruptcy have lost two hundred pounds by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed, have destroyed, altered, mutilated or falsified, or caused to be destroyed, altered, mutilated or falsified, any of his books, papers, writings or securities, or made or been privy to the making of any false or fradulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of ten pounds or upwards; or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or if he shall afterwards know the same, not disclosing the same to his assignees within one month after such knowledge.

Bankrupt not entitled to Certificate or Allowance, and Certificate obtained void, if he has lost 20*l.* in one Day, or 200*l.* within 12 Months; or 200*l.* by Stock-jobbing; or destroyed Books, &c.; or made fraudulent Entries; or concealed Property to the Value of 10*l.*; or permitted fictitious Debts to be proved.

CXXVIII. And be it enacted, That no bankrupt after his certificate of conformity shall have been allowed under any commission of bankruptcy already issued, or hereafter to be issued, shall be liable to pay or satisfy any debt claim or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim or demand, upon any contract promise or agreement made or to be made after the suing out of the commission, unless such promise contract or agreement be made in writing, signed by the bankrupt or by some person thereto lawfully authorized in writing, by such bankrupt.

Bankrupt not liable upon any Promise to pay Debt discharged by Certificate, unless it be in Writing.

CXXIX. And be it enacted, That the assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such bankrupt, his executors, administrators, or assigns; and every such bankrupt after the creditors who have proved under the commission shall have been paid, may recover the remainder of the debts due to him; but the assignees shall not pay such surplus, until all creditors who have proved under the commission shall have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say,) all creditors whose debts are now by law entitled to carry interest in the event of a surplus, shall first receive interest on such debts at the rate of interest reserved or by law payable thereon, to be calculated from the proof thereof; and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the proof at the rate of four *per cent.*

Assignees, in case of Surplus, shall account and pay it to the Bankrupt.

In case of a Surplus all Debts to carry Interest.

No. II. 6 Geo. IV. c. 16.

Nine-tenths in Number and Value of Creditors may accept a Composition, which shall bind the rest.

CXXX. And be it enacted, That at any meeting of creditors after the bankrupt shall have passed his last examination, whereof and of the purport of which twenty-one days notice shall have been given in the *London Gazette*, if the bankrupt or his friends shall make an offer of composition or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the Lord Chancellor may upon such acceptance being testified by them in writing, supersede the same.

Mode of voting in deciding upon such Composition.

CXXXI. And be it enacted, That in deciding upon such offer as aforesaid, any creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such creditor shall be computed in value; and that any creditor to the amount of fifty pounds and upwards, residing out of *England*, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor may vote by letter of attorney executed and attested in manner hereby required for such creditors voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall, if thereto required, make oath before the Commissioners that there has been no such transaction between him, or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

Construction of the Act.

CXXXII. And be it enacted, That this Act shall be construed beneficially for creditors, and that nothing herein contained shall alter the present practice in bankruptcy, except where any such alteration is expressly declared; and that it shall extend to aliens denizens and women, both to make them subject thereto, and to entitle them to all the benefits given thereby; and that all powers hereby given to or duties directed to be performed by the Lord Chancellor, shall and may be exercised or performed by a Lord Keeper or Lords Commissioners of the great seal: and all powers given to or duties directed to be performed by the Commissioners or assignees, may be exercised or performed respectively by the major part of the Commissioners, or by one assignee where only one shall have been chosen; that nothing herein contained shall render invalid any commission of bankruptcy now subsisting or which shall be subsisting at the time this Act shall take effect, or any proceedings wheih may have been had, or affect or lessen any right, claim, demand or remedy which any person now has thereunder, or upon or against any bankrupt against whom any commission has or shall have issued except as is herein specifically enacted; and that this Act shall not extend either to *Scotland* or *Ireland*, except where the same are expressly mentioned.

Subsisting Commissions declared valid.

Act not to extend to Scotland or Ireland.

Commencement of Act.

CXXXIII. And be it enacted, That this Act shall not, as to any enactments therein contained, take effect before the first day of *May* one thousand eight hundred and twenty-five; save that so many of such enactments as relate to the certificates of persons becoming bankrupts before this Act passed, or who shall become bankrupts before the said first day of *May*, shall take effect upon the passing of this Act.

[No. II.] 6 George IV. c. 16.—An Act to amend the Laws relating to Bankrupts.—[2d *May*, 1825.]

WHEREAS it is expedient to amend the laws relating to bankrupts, and to simplify the language thereof, and to consolidate the same, so amended and simplified, in one Act, and to make other provisions

No. II. 6 Geo. IV. c. 16.

respecting bankrupts; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act passed in the thirty-fourth and thirty-fifth years of the reign of King *Henry* the Eighth, intituled *An Act against such Persons as do make Bankrupt*; and also an Act passed in the thirteenth year of the reign of Queen *Elizabeth*, intituled *An Act touching Orders for Bankrupts*; and also an Act passed in the first year of the reign of King *James* the First, intituled *An Act for the better Relief of the Creditors against such as shall become Bankrupts*; and also an Act passed in the twenty-first year of the reign of King *James* the First, intituled *For the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts, and for inflicting Corporal Punishment upon the Bankrupts in some Special Cases*; and also an Act passed in the thirteenth and fourteenth years of the reign of King *Charles* the Second, intituled *An Act declaratory concerning Bankrupts*; and also an Act passed in the tenth year of the reign of Queen *Anne*, intituled *An Act for repealing a Clause in the above-mentioned Statute passed in the Twenty-first Year of the Reign of King* James *the First, and for the Explanation of the Laws relating to Bankruptcy in Cases of Partnership*; and also an Act made in the seventh year of the reign of King *George* the First, intituled *An Act for explaining and making more effectual the several Acts concerning Bankrupts*; and also an Act passed in the fifth year of the reign of King *George* the Second, intituled *An Act to prevent the committing of Frauds by Bankrupts*; and also an Act passed in the nineteenth year of the reign of King *George* the Second, intituled *An Act for amending the Laws relating to Bankrupts*; and also so much of an Act passed in the twenty-fourth year of the reign of King *George* the Second, the title of which begins with the words *An Act to continue several Laws therein mentioned for preventing Theft and Rapine*, and concludes with the words, *and to make some further Provisions in relation to the signing of Certificates for the Discharge of Bankrupts*, as relates to the prevention of frauds by bankrupts, and to some further provisions in relation to the signing of certificates for the discharge of bankrupts; and also an Act passed in the fourth year of the reign of His late Majesty King *George* the Third, intituled *An Act for preventing Inconveniencies arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament, and becoming insolvent*; and also so much of an Act passed in the thirty-sixth year of the reign of His late Majesty, intituled *An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of* England, as relates to trustees in whose names stock shall be standing at the Bank becoming bankrupt, and to bankrupts refusing to transfer stock standing in their own right; and also an Act passed in the thirty-seventh year of the reign of His late Majesty, intituled *An Act to make perpetual an Act passed in the fifth Year of the Reign of His late Majesty, intituled 'An Act to prevent the committing of Frauds by Bankrupts';* and also so much of an Act passed in the forty-fifth year of the reign of His late Majesty, intituled *An Act to amend an Act passed in the Fourth Year of his present Majesty, intituled 'An Act for preventing Inconveniencies arising in 'Cases of Merchants, and such other Persons as are within the Description 'of the Statutes relating to Bankrupts, being entitled to Privilege of Par-'liament, and becoming insolvent,' and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament*, as relates to the execution of certain bonds by traders having privilege of Parliament, and to the disobedience by such traders of orders for payment of money; and also an Act passed in the forty-sixth year of the reign of His late Majesty, intituled *An Act to amend the Laws relating to Bankrupts*; and also an Act passed in the forty-ninth year of the reign of His late Majesty, intituled *An Act to alter and amend the Laws relating to Bankrupts*; and also an Act passed in the fifty-sixth year of the reign of His late Majesty, intituled *An Act to extend the provisions of an Act of the*

Former Enactments respecting Bankrupts repealed:
34 & 35 H. 8. c. 4.
13 Eliz. c. 7.
1 Jac. 1. c. 15.
21 Jac. 1. c. 19.
13 & 14 Car. 2 c. 24.
10 Ann. c. 15.
7 G. 1. c. 31.
5 G. 2. c. 30.
19 G. 2. c. 32.
24 G. 2. c. 57.
4 G. 3. c. 33.
36 G. 3. c. 90.
37 G. 3. c. 124.
45 G. 3. c. 124.
46 G. 3. c. 135.
49 G. 3. c. 121.
56 G. 3. c. 137.

No. II. 6 Geo. IV. c. 16.

First Year of the Reign of King James *the First, intituled* '*An Act* '*for the better Relief of the Creditors against such as shall become Bank-*'*rupts*;' and also so much of an Act passed in the first year of the reign of His present Majesty, intituled *An Act to repeal so much of the several Acts passed in the Twenty-ninth Year of the Reign of* Elizabeth, *the Fourth of* George *the First, the Fifth and Eighth of* George *the Second, as inflicts capital Punishment on certain Offences therein specified, and to provide more suitable and effectual Punishment for such Offences,* as relates to the punishment of frauds committed by bankrupts; and also an Act passed in the third year of the reign of His present Majesty, intituled *An Act to amend the Laws relating to Bankrupts under joint Commissions*; and also another Act passed in the third year of His present Majesty, intituled *An Act to amend the Laws relating to Bankrupts*; and also another Act passed in the fifth year of the reign of His present Majesty, intituled *An Act to consolidate and amend the Bankrupt Laws,* be hereby repealed.

1 G. 4. c. 115.

3 G. 4. c. 74.

3 G. 4. c. 81.

5 G. 4. c. 98.

What Persons shall be deemed Traders liable to become Bankrupt.

II. And be it enacted, That all bankers brokers and persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody, and persons insuring ships or their freight, or other matters, against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupt: Provided, that no farmer, grazier, common labourer or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated commercial or trading companies established by charter or Act of Parliament, shall be deemed as such a trader liable by virtue of this Act to become bankrupt.

What Persons not liable.

Departing the Realm; absenting; beginning to keep House; yielding to Prison; fraudulent Outlawry; Arrest; Attachment, Execution, Conveyance, Surrender, or Gift: Acts of Bankruptcy.

III. And be it enacted, That if any such trader shall depart this realm, or being out of this realm shall remain abroad, or depart from his dwelling-house, or otherwise absent himself, ot begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods money or chattels to be attached sequestered or taken in execution, or make or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make or cause to be made any fraudulent surrender of any of his copyhold lands or tenements, or make or cause to be made any fraudulent gift delivery or transfer of any of his goods or chattels; every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts deeds or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy.

Conveyance of all a Trader's Property not to be an Act of Bankruptcy, unless a Commission issue within Six Months.

Proviso as to the Execution; and Notice in the Gazette and Newspapers.

IV. And be it enacted, That where any such trader shall, after this Act shall have come into effect, execute any conveyance or assignment, by deed, to a trustee or trustees, of all his estate and effects for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader; provided that such deeds shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in *London* or within forty miles thereof, in the *London Gazette*, and also in two *London* daily newspapers; and in case such trader does not reside within forty miles of *London*, then in the *London Gazette* and also in one *London* daily newspaper and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execu-

tion of such deed, and the name and place of abode respectively of every such trustee and of such attorney or solicitor.

V. And be it enacted, That if any such trader having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy; or if any such trader, having been arrested committed or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest commitment or detention: Provided, that if any such trader shall be in prison at the time of the commencement of this Act, such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months.

Lying in Prison;

escaping out of Prison; Acts of Bankruptcy.

Proviso as to lying in Prison at the passing of the Act.

VI. And be it enacted, That if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the *London Gazette* to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the *London Gazette* within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after insertion of such advertisement, in case such commission is to be executed in *London*, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

Declaration of Insolvency left at the Bankrupt Office an Act of Bankruptcy.

Advertisement to be inserted in the Gazette.

Commission must issue within Two Months.

Docket not to be struck before Four Days in a Town, or Eight in a Country Commission.

Gazette Evidence.

VII. And be it enacted, That no commission under which the adjudication shall be grounded on the act of bankruptcy, being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

Declaration concerted between Bankrupt and Creditor not to invalidate commission.

VIII. And be it enacted, That if any such trader, liable by virtue of this Act to become bankrupt, shall after a docket struck against him, pay to the person or persons who struck the same or any of them, money, or give or deliver to any such person any satisfaction or security for his debt or any part thereof, whereby such person may receive more in the pound in respect of his debts than the other creditors, such payment, gift, delivery, satisfaction or security, shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue, and such commission may be supported either by proof of such last-mentioned or of any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as aforesaid, or the full value thereof, to such person or persons as the Commissioners acting under such original commission, or any new commission, shall appoint for the benefit of the creditors of such bankrupt.

Trader compounding with Petitioning Creditor an Act of Bankruptcy.

Commission may either be superseded or continued; Penalty on Creditor so compounding.

IX. And be it enacted, That if any such trader having privilege of Parliament shall commit any of the aforesaid acts of bankruptcy, a

Traders having Privilege of Parliament may be proceeded against as other Traders.

No. II. 6 Geo. IV. c. 16.

commission of bankrupt may issue against him, and the Commissioners and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts, but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

Trader having privilege of Parliament, not paying or compounding to the Satisfaction of the Creditor, and also entering an Appearance to the Action within One Month, an Act of Bankruptcy.

X. And be it enacted, That if any creditor or creditors of any such trader having privilege of Parliament to such amount as is herein-after declared requisite to support a commission, shall file an affidavit or affidavits in any Court of Record at *Westminster*, that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe is such trader as aforesaid, and shall sue out of the same court a summons or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not within one calendar month after personal service of such summons, pay secure or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons, and any creditor or creditors of such trader to such amount as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Trader having Privilege of Parliament, disobeying Order of any Court of Equity, or in Bankruptcy or Lunacy, for Payment of Money after Service and peremptory Day fixed, an Act of Bankruptcy.

XI. And be it enacted, That if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of Parliament, ordering such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order or interested in enforcing the payment thereof pursuant to such decree or order, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof, and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts.

Power to the Lord Chancellor to issue a Commission.

XII. And be it enacted, That the Lord Chancellor shall have power, upon petition made to him in writing against any trader having committed an act of bankruptcy, by any creditor or creditors of such trader, by commission under the great seal, to appoint such persons as to him shall seem fit, who shall by virtue of this Act and of such commission have full power and authority to take such order and direction, with the body of such bankrupt, as herein-after mentioned, as also with all his lands, tenements and hereditaments, both within this realm and abroad, as well copy or customaryhold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements and hereditaments as such bankrupt may lawfully depart with all, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize and debts, wheresoever they may be found or known, and to make sale thereof in manner herein-after mentioned, or otherwise order the same for satisfaction and payment of the creditors of the said bankrupt.

Petitioning Creditor shall make Oath of his Debt, and give Bond to the Lord Chancellor.

XIII. And be it enacted, That the petitioning creditor shall, before any commission be granted make an affidavit in writing before a master ordinary or extraordinary in Chancery, (which shall be filed with the proper officer,) of the truth of such his or their respective debt or debts; and shall likewise give bond to the Lord Chancellor in the penalty of

two hundred pounds, to be conditioned for proving his or their debt or debts, as well before the Commissioners as upon any trial at law, in case the due issuing forth of the commission be contested, and also for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed on such commission; but if such debt or debts shall not be really due, or if after such commission taken out it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall also appear that such commission was taken out fradulently or maliciously, the Lord Chancellor shall and may upon petition of the party or parties against whom the commission was so taken out, examine into the same, and order satisfaction to be made to him or them for the damages by him or them sustained, and for the better recovery thereof, may assign such bond or bonds to the party or parties so petitioning, who may sue for the same in his and their name or names.

Power to the Lord Chancellor to assign Bond.

XIV. And be it enacted, That the petitioning creditor or creditors shall at his or their own costs, sue forth and prosecute the commission until the choice of assignees; and the Commissioners shall, at the meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees (who are hereby thereto required) to reimburse such petitioning creditor or creditors such costs out of the first money that shall be got in under the commission; and all bills of fees or disbursements of any solicitor or attorney employed under any commission for business done after the choice of assignees, shall be settled by the Commissioners, except that so much of such bills as contain any charge respecting any action at law, or suit in equity, shall be settled by the proper officer of the court in which such business shall have been transacted, and the same, so settled shall be paid by the assignees to such solicitor or attorney: Provided that any creditor who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the Commissioners, may have any such costs and bills settled by a master in Chancery, who shall receive for such settlement, and the certificate thereof, twenty shillings, and no more.

Petitioning Creditor to prosecute Commission at his own Costs, until Choice of Assignees.

Bills of Costs to be taxed by Commissioners.

Creditor may have Bills taxed by a Master.

XV. And be it enacted, That no such commission shall be issued unless the single debt of such creditor, or of two or more persons being partners, petitioning for the same, shall amount to one hundred pounds or upwards, or unless the debt of two creditors so petitioning shall amount to one hundred and fifty pounds or upwards, or unless the debt of three or more creditors so petitioning shall amount to two hundred pounds or upwards; and that every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security in writing or otherwise for such sum or not.

Amount of Petitioning Creditor's Debt.

May be upon Debt payable at a future Time, although no Security given.

XVI. And be it enacted, That any creditor or creditors whose debt or debts is or are sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners of such firm, and every commission issued upon such petition shall be valid although it does not include all the partners of the firm; and in every commission against two or more persons it shall be lawful for the Lord Chancellor to supersede such commission as to one or more of such persons, and the validity of such commission shall not be thereby affected as to any person as to whom such commission is not ordered to be superseded, nor shall any such person's certificate be thereby affected.

Joint Commissions may be issued against Partners in a Firm.

May be superseded as to One or more, without affecting the rest.

XVII. And be it enacted, That if after a commission issued against two or more members of a firm any other commission or commissions shall be issued against any other member or members of such firm, such other commission or commissions, shall be directed to the Commissioners to whom the first commission was directed, and immediately after the adjudication under such other commission or commissions the Commissioners shall convey and assign all the estate real and personal of such bankrupt or bankrupts, to the assignees chosen in the first commission; and after such con-

In Cases of a Second or other Commission being issued, Lord Chancellor may direct that such Commissions be proceeded in separately or in conjunction,

No. II. 6 Geo. IV. c. 16.

veyance all separate proceedings under such other commission or commissions shall be stayed, and such commission or commissions shall, without affecting the validity of the first commission, be annexed to and form part of the same; provided that the Lord Chancellor may direct that such other commission or commissions be issued to any other Commissioners, or that such other commission or commissions shall proceed either separately or in conjunction with the first commission.

Proceeding in case Petitioning Creditor's Debt be insufficient to support Commission.

XVIII. And be it enacted, That if after adjudication the debt or debts of the petitioning creditor or creditors, or any of them be found insufficient to support a commission, it shall be lawful for the Lord Chancellor, upon the application of any other creditor or creditors, having proved any debt or debts, sufficient to support a commission, provided such debt or debts has or have been incurred not anterior to the debt or debts of the petitioning creditor or creditors to order the said commission to be proceeded in, and it shall by such order be deemed valid.

Commission not invalid by reason of prior Act of Bankruptcy.

XIX. And be it enacted, That no commission shall be deemed invalid by reason of any act or acts of bankruptcy prior to the debt or debts of the petitioning creditor or creditors, or any of them, provided there be a sufficient act of bankruptcy subsequent to such debt or debts.

Auxiliary Commissions for Proof of Debts or Examination of Witnesses.

XX. And be it enacted, That it shall be lawful for the Lord Chancellor to direct an auxiliary commission to issue for proof of debts under twenty pounds, and for the examination of witnesses on oath or for either of such purposes; and the Commissioners in every such commission issued for the examination of witnesses shall possess the same powers to compel the attendance of and to examine witnesses, and to enforce both obedience to such examination, and the production of books, deeds, papers, writings and other documents as are possessed by the Commissioners in any original commission: Provided always, that all such examinations of witnesses under such commissions shall be taken down in writing, and shall be annexed to and form part of the original commission.

Examinations to be annexed to the original Commission.

Commissioner's Oath.

XXI. And be it enacted, That no Commissioner shall be capable of acting in the execution of any of the powers and authorities given by this Act (except the power hereby given of administering the oath next herein-after mentioned) until he shall have taken an oath in the presence of one or more of the said Commissioners, to the effect following; (that is to say;)

'I *A. B.* do swear, That I will faithfully impartially and honestly, according to the best of my skill and knowledge, execute the several 'powers and trusts reposed in me as a Commissioner in a commission of 'bankruptcy against and that without favour or 'affection, prejudice or malice. 'So help me GOD.'

How to be administered.

Which oath the Commissioners are hereby empowered and required to administer one to another in the same commission named; and they shall enter and keep a memorial or memorials thereof, signed by them respectively, among the proceedings under each commission.

Commissioner's Fees.

XXII. And be it enacted, That the said Commissioners shall receive and be paid the fee of twenty shillings each Commissioner for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate; and where any commission shall be executed in the country, every Commissioner, being a barrister at law, shall receive a further fee of twenty shillings for each meeting; and in case the usual place of residence of such Commissioner, being a barrister, is distant seven miles or upwards from the place where such meetings are holden, and he shall travel such distance to any such meeting, he may receive a further sum of twenty shillings for every such meeting; and every Commissioner who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expence to be made, shall be disabled for ever from acting in such or any other commission.

Commissioners in Country Commissions being Barristers, entitled to preference.

XXIII. And be it enacted, That at every meeting under any commission to be executed in the country, wherein any one or more of the Commissioners named may be a barrister or barristers, such barrister or bar-

risters, or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting Commissioner or Commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other Commissioners in the said commission named.

Commissioners before Adjudication may summon Persons to give Evidence of Trading and Act of Bankruptcy.

XXIV. And be it enacted, That it shall be lawful for the Commissioners, after they shall have taken such oath as aforesaid, by writing under their hands, to summon before them any person whom they shall believe capable of giving any information concerning the trading of or any act or acts of bankruptcy committed by the person or persons against whom such commission is issued, and also to require any person so summoned to produce any books, papers, deeds and writings, and other documents in the custody possession or power of such person, which may appear to the said Commissioners to be necessary to establish such trading or act or acts of bankruptcy; and it shall be lawful for the said Commissioners to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning the trade of or any act or acts of bankruptcy committed by the person or persons against whom such commission shall have issued; and every such person so summoned shall incur such danger or penalty for not coming before the Commissioners, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the said Commissioners, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy; and the Commissioners, upon proof made before them of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy of the person or persons against whom such commission is issued, shall thereupon adjudge such person or persons bankrupt.

Adjudication.

Commissioners to appoint Meetings, and to give Notice in the London Gazette.

XXV. And be it enacted, That the Commissioners, after they have so adjudged as aforesaid, shall forthwith cause notice of such adjudication to be given in the *London Gazette*, and shall thereby appoint three public meetings for the bankrupt to surrender and conform, the last of which meetings shall be on the forty-second day hereby limited for such surrender.

Commissions not to abate by Death of the King, &c.

XXVI. And be it enacted, That no commission shall abate by reason of a demise of the crown, and (if by reason of the death of Commissioners, or for any other cause, it become necessary) any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same; and if any bankrupt shall die after adjudication, the Commissioners may proceed in the commission as they might have done if he were living.

Messenger may break open the Bankrupt's Doors, &c. and seize upon his Body or Property.

XXVII. And be it enacted, That it shall be lawful for any person appointed by the Commissioners, by their warrant under their hands and seals, to break open any house, chamber, shop, warehouse, door, trunk, or chest of any bankrupt, where such bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, it shall be lawful for the person so appointed as aforesaid to seize any property (his necessary wearing apparel only excepted) in the custody or possession of such bankrupt, or of any other person, in any prison or place where such bankrupt is in custody.

Messenger may seize Goods in Ireland.

XXVIII. And be it enacted, That it shall be lawful for the person so appointed by the Commissioners as aforesaid, to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in *Ireland*, where any of the property of such bankrupt shall be reputed to be, and seize the same; provided such warrant as aforesaid shall have been verified upon oath by the attorney or solicitor suing out the commission, before the mayor or other chief magistrate of the city borough or town corporate where or near to which the said commission is executed, and verified under the common seal thereof, or the seal of the office of such mayor or other magistrate; and provided also, that the person thereby appointed shall, before a Justice of Peace residing in the county

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where such property shall be reputed to be, depose upon oath that he is the person named in such warrant.

Messenger may obtain Search Warrant, where Property of the Bankrupt is sworn to be concealed.

XXIX. And be it enacted, That in all cases where it shall be made to appear to the satisfaction of any Justice of Peace in *England* or *Ireland*, that there is reason to suspect and believe that the property of the bankrupt is concealed in any house, premises, or other place not belonging to such bankrupt, such Justice of Peace is hereby directed and authorized to grant a search warrant to the person so deputed by the Commissioners as aforesaid, and it shall be lawful for such person to execute the same in like manner, and such person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen and concealed.

Execution of such Warrant in Scotland.

XXX. And be it enacted, That if in the execution of any warrant of seizure so granted by the Commissioners as aforesaid, it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in *Scotland*, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property, such warrant, after having been verified upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or Justice of the Peace in *Scotland*, who are hereby required, within their respective jurisdictions, to back or indorse the same; and such warrant so indorsed shall be sufficient authority to the person bringing such warrant, and to all officers of the law in *Scotland*, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, and to seize and take possession of such property, to be distributed under the said commission, or otherwise dealt with according to law.

As to Actions against Persons acting in obedience to Warrant of Commissioners.

XXXI. And be it enacted, That no action shall be brought against any person so appointed by the Commissioners for any thing done in obedience to their warrant prior to the choice of assignees, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person or persons by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand and compliance therewith any action be brought against the person so appointed as aforesaid, without making the petitioning creditor or creditors, defendant or defendants, if living, on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Commissioners; and if such action be brought against the petitioning creditor or creditors and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed as aforesaid, notwithstanding any such defect of jurisdiction as aforesaid; and if the verdict shall be given against the petitioning creditor or creditors, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the plaintiff or plaintiffs are liable to pay to the person so appointed as aforesaid.

Proof in such Actions that Defendants are Petitioning Creditors renders them liable.

XXXII. And be it enacted, That in any such action so brought as aforesaid against the petitioning creditor or creditors, either alone or jointly with the person so appointed by the Commissioners as aforesaid, for any thing done in obedience to their warrant, proof by the plaintiff or plaintiffs in such action that the defendant or defendants, or any of them, are petitioning creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner, and to the same extent, as if the act complained of in such action had been done or committed by such defendant or defendants.

Commissioners empowered to summon Persons suspected of having Bankrupt's Property in their Hands, &c.; and compel them to produce Books, &c.

XXXIII. And be it enacted, That after adjudication it shall be lawful for the Commissioners, by writing under their hands, to summon before them any person known or suspected to have any of the estate of the

bankrupt in his possession, or who is supposed to be indebted to the bankrupt, or any person whom the Commissioners believe capable of giving information concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy committed by him, or any information material to the full disclosure of the dealings of the bankrupt; and it shall be lawful for the said Commissioners to require such person to produce any books, papers, deeds, writings, or other documents in his custody or power, which may appear to the Commissioners necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the Commissioners are authorized to inquire into; and if such person so summoned as aforesaid shall not come before the Commissioners at the time appointed, having no lawful impediment (made known to the said Commissioners at the time of their meeting, and allowed by them), it shall be lawful for the said Commissioners, by warrant under their hands and seals, to authorize and direct the person or persons therein named for that purpose, to apprehend and arrest such person, and bring him before them to be examined as aforesaid.

Power to examine Persons summoned, or present at any Meeting.

XXXIV. And be it enacted, That upon the appearance of any person so summoned or brought before the Commissioners as aforesaid, or if any person be present at any meeting of the Commissioners, it shall be lawful for them to examine every such person upon oath, either by word of mouth, or by interrogatories in writing, concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy by such bankrupt committed, and to reduce into writing the answers of every such person, and such answers so reduced into writing the party examined is hereby required to sign and subscribe; and if any such person shall refuse to be sworn, or shall refuse to answer any lawful questions put to him by the said Commissioners touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said Commissioners any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid (not having any lawful objection allowed by the said Commissioners), or shall not produce any books, papers, deeds and writings, and other documents in his custody or power relating to any of the matters aforesaid, which such person was required by the Commissioners to produce, and to the production of which he shall not state any objection allowed by the said Commissioners, it shall be lawful for them, by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain without bail until he shall submit himself to them to be sworn, and full answers make to the satisfaction, to all such lawful questions as shall be put to him, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid in his custody or power, to the production of which no such objection as aforesaid has been allowed.

Persons refusing to be sworn, or to answer, or not fully answering, or refusing to sign Examination, or to produce Books, &c. may be committed.

Persons known or suspected to have Bankrupt's Property to have Costs.

XXXV. And be it enacted, That where any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, shall be summoned to attend before the said Commissioners, every such person shall have such costs and charges as the said Commissioners in their discretion shall think fit; and every witness summoned to attend before the Commissioners shall have his necessary expences tendered to him in like manner as is now by law required upon service of a subpœna to a witness in an action at law.

Witnesses to have Expences tendered.

Commissioners may summon Bankrupt;

XXXVI. And be it enacted, That it shall be lawful for the Commissioners, by writing under their hands, to summon any bankrupt before them, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time by them appointed (having no lawful impediment made known to them at such time, and allowed by them), it shall be lawful for the said Commissioners, by warrant under their hands and seals, to authorize and direct any person or persons they shall think fit to apprehend and arrest such bankrupt, and bring him before them; and upon the appearance of such bankrupt or if such bankrupt be present at any meeting of the said Commissioners, it shall be lawful for them to

Power to examine the Bankrupt.

No. II. 6 Geo. IV. c. 16.

examine such bankrupt upon oath either by word of mouth, or on interrogatories in writing, touching all matters relating either to his trade dealings or estate, or which may tend to disclose any secret grant conveyance or concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing, which examination so reduced into writing, the said bankrupt shall sign and subscribe; and if such bankrupt shall refuse to be sworn, or shall refuse to answer any questions put to him by the said Commissioners touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said Commissioners any such questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection allowed by the said Commissioners,) it shall be lawful for the said Commissioners by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain without bail until he shall submit himself to the said Commissioners to be sworn, and full answers make to their satisfaction to such questions as shall be put to him, and sign and subscribe such examination.

Bankrupt refusing to be sworn, or answer, or not fully answering, or to sign his Examination, may be committed.

XXXVII. And be further enacted, That it shall be lawful for the Commissioners in manner aforesaid, to summon before them the wife of any bankrupt, and in manner aforesaid to examine her for the finding out and discovery of the estate goods and chattels of such bankrupt concealed kept or disposed of by such wife, in her own person, or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the Commissioners, or for refusing to be sworn and examined, or for refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the Commissioners, as is hereby provided against other persons.

Commissioners may summon and examine the Bankrupt's Wife.

XXXVIII. And be it enacted, That if any gaoler to whose custody any bankrupt or other person shall be committed as aforesaid, shall suffer such bankrupt or other person to escape, every such goaler shall forfeit five hundred pounds.

Penalty on Gaoler for Escape 500*l.*

XXXIX. And be it enacted, That if any person be committed by the Commissioners for refusing to answer or for not fully answering any question put to him by the said Commissioners, they shall in their warrant of commitment specify every such question: Provided, that if any person committed by the Commissioners shall bring any *habeas corpus* in order to be discharged from such commitment, and there shall appear on the return of such *habeas corpus* any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the court or judge before whom such party shall be brought by *habeas corpus*, and such court or judge is hereby required to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such court or judge by the party committed, that he has fully answered all lawful questions put to him by the Commissioners; or if such person was committed for refusing to be sworn, or for not signing his examination unless it shall appear to such court or judge that he had a sufficient reason for the same: Provided also, that such court or judge shall if required thereto by the party committed, in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such party whereof any such question was a part; and if it shall appear from the whole examination that the answer or answers of the party committed is or are satisfactory, such court or judge shall and may order the party so committed to be discharged.

Questions to be particularly specified on Warrant.

If Habeas Corpus be brought, the Judge may re-commit the Prisoner.

Court or Judge may look at the whole of the Examination.

XL. And be it enacted, That in every action in respect of any such commitment brought by any bankrupt or other person committed, the court or judge before which or whom such action is tried shall, if thereto required by the defendant or defendants in such action (in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment), inspect and consider the whole of such examination; and if upon such inspection and consideration it shall appear to such court or judge that the party was lawfully commit-

In Actions of false Imprisonment, the Court may look at the whole of the Examination of the Party committed.

ted, the defendant or defendants in such action shall have the same benefit therefrom as if the whole of such examination had been therein stated.

XLI. And be it enacted, That no writ shall be sued out against nor copy of any process served on any Commissioner, for any thing by him done as such Commissioner, unless notice in writing of such intended writ or process shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party intending to sue or cause the same to be sued out or served at least one calendar month before the suing out or serving the same; and such notice shall set forth the cause of action which such party has or claims to have against such Commissioner, and on the back of such notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall receive no more than twenty shillings for preparing and serving such notice.

No Writ to be sued out against any Commissioner in less than a Month after Notice given.

Notice to set forth Cause of Action, &c.

XLII. And be it enacted, That no such plaintiff shall recover any verdict against such Commissioner in any case where the action shall be grounded on any act of the defendant as Commissioner, unless it is proved upon the trial of such action that such notice was given as aforesaid, but in default thereof such Commissioner shall recover a verdict and costs as herein-after mentioned; and no evidence shall be permitted to be given by the plaintiff on the trial of any such action of any cause of action, except such as is contained in the notice.

Plaintiff shall not recover unless Notice proved, and no Evidence shall be given to any thing not contained in the Notice.

XLIII. And be it enacted, That every such Commissioner may, at any time within one calendar month after such notice, tender amends to the party complaining or to his agent or attorney; and if the same is not accepted, may plead such tender in bar to any action brought against him grounded on such writ or process together with the plea of Not Guilty, and any other plea with leave of the court; and if upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and if the plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such defendant upon demurrer, such Commissioner shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; and if upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper which he shall recover together with costs of suit: Provided that if any such Commissioner shall neglect to tender any amends, or shall have tendered insufficient amends before the action brought, he may by leave of the court where such action shall depend, at any time before issue joined, pay into court such sum of money as he shall think fit, whereupon such proceedings shall be had in court as in other actions where the defendant is allowed to pay money into court.

Tender of Amends within One Month after Notice, and pleaded in bar, &c.

Amends may be paid into Court before Issue joined.

XLIV. And be it enacted, That every action brought against any person for any thing done in pursuance of this Act shall be commenced within three calendar months next after the fact committed; and the defendant or defendants in any such action may plead the general issue, and give this Act and the special matter in evidence at the trial, and that the same was done by authority of this Act; and if it shall appear so to have been done, or that such action was commenced after the time before limited for bringing the same, the jury shall find for the defendant or defendants; and if there be a verdict for the defendant, or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his or their action or suit after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover double costs.

Limitation of Actions.

General Issue.

Double Costs.

XLV. And be it enacted, That it shall be lawful for the Commissioners as often as they shall think fit, by writing under their hands, to appoint one or more person or persons an assignee or assignees of the bankrupt's real and personal estate or of any part thereof, which assignee or assignees shall or may be removed at the meeting of the creditors for the choice of assignees, if they shall think fit, and such assignee or assignees so removed shall deliver up and assign all the estate of the

Commissioners may appoint Assignees until others are chosen by Creditors.

No. II. 6 Geo. IV. c. 16.

bankrupt come to his or their possession to the assignees so chosen as hereinafter mentioned; and all the estate of the bankrupt, which shall be so delivered up and assigned, shall be as effectually and legally vested in the assignees so chosen as aforesaid, as if the first assignment had been made to them by the Commissioners; and if such first assignee or assignees shall not within ten days after notice given of the said choice of assignees, and of their consent to accept such assignment signified to the first assignee or assignees by writing under their hands, make such assignment and delivery as aforesaid, every such assignee shall forfeit two hundred pounds.

Penalty on First Assignee for not delivering the Effects to the new ones, 200*l.*

XLVI. And be it enacted, That at the three several meetings so appointed by the Commissioners as aforesaid, and at every other meeting by them appointed for proof of debts (whereof and of the purport whereof ten days' notice shall have been given in the *London Gazette*), every creditor of the bankrupt may prove his debt by his own oath; and all bodies politic and public companies incorporated or authorized to sue or bring actions, either by charter or Act of Parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorized to make such proof; and if any creditor shall live remote from the place of the meeting of the Commissioners, he may prove by affidavit, sworn before a master in Chancery, ordinary or extraordinary; or if such creditor shall live out of *England*, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a notary public *British* minister or consul, and no creditor shall pay any contribution on account of any such debt; provided, that it shall be lawful for the said Commissioners to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under the said commission, or to require such further proof, and to examine such other persons in relation thereto as they shall think fit.

Debts how to be proved.

By Corporations, &c.

By Creditor remote or abroad.

Creditor may be examined upon Oath.

XLVII. And be it enacted, That every person with whom any bankrupt shall have really and *bonâ fide* contracted any debt or demand before the issuing the commission against him, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission, as if no such act of bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of bankruptcy by such bankrupt committed.

Bonâ fide Creditors shall be admitted to prove notwithstanding any secret Act of Bankruptcy.

XLVIII. And be it enacted, That when any bankrupt shall have been indebted, at the time of issuing the commission against him, to any servant or clerk of such bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the Commissioners, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months' wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt; and such servant or clerk shall be at liberty to prove under the commission for any sum exceeding such last-mentioned amount.

Commissioners may order Six Months' Wages of Servants or Clerks of Bankrupt to be paid.

XLIX. And be it enacted, That where any person shall be an apprentice to a bankrupt at the time of issuing of the commission against him, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound to such bankrupt; and if any sum shall have been really and *bonâ fide* paid, by or on behalf of such apprentice, to the bankrupt, as an apprentice fee, it shall be lawful for the Commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice which they shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission.

Apprentices discharged from their Indentures.

Commissioners may order any Sum to be paid in respect of Apprentice Fees.

L. And be it enacted, That where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the Commissioners shall

Mutual Debts and Credits may be set off, notwithstanding a secret Act of Bankruptcy.

state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him, and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively, and every debt or demand hereby made proveable against the estate of the bankrupt, may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed.

Debts not payable at the Time of the Bankruptcy may be proved, deducting Rebate of Interest.

LI. And be it enacted, That any person who shall have given credit to the bankrupt upon valuable consideration, for any money or other matter or thing whatsoever, which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negociable security or not, shall be entitled to prove such debt, bill, bond, note, or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five *per cent.*, to be computed from the declaration of a dividend to the time such debt would have become payable, according to the terms upon which it was contracted.

Sureties and Persons liable for the Debts of Bankrupts may prove, after having paid such Debts.

LII. And be it enacted, That any person who at the issuing the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt (although he may have paid the same after the commission issued), if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved under the commission, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors although he may have become surety liable or bail as aforesaid after an act of bankruptcy committed by such bankrupt; provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed.

Obligee in Bottomry or Respondentia Bonds, and Assured in Policy of Insurance, admitted to claim; and after Loss to prove.

LIII. And be it enacted, That the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the issuing the commission against such obligor or insurer; and that the person effecting any policy of insurance upon ships or goods with any person, as a subscriber or underwriter, becoming bankrupt, shall be entitled to prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the united realm.

Persons effecting Insurance admitted to prove Loss.

Annuity Creditors admitted to prove.

LIV. And be it enacted, That any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity, which value the Commissioners shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission.

Sureties for Payment of Annuities granted by Bankrupt, in what Manner to come in under the Commission.

LV. And be it enacted, That it shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person who

No. II. 6 Geo. IV. c. 16.

may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment thereof; and if such surety after such proof pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have paid or satisfied the amount so proved, with interest thereon at the rate of four *per cent. per annum*, from the time of notice of such proof, and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant or of such surety in respect of such annuity; provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid.

Debts contingent at the Time of the Bankruptcy, to be proveable after the happening of Contingency.

LVI. And be it enacted, That if any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the Commissioners to set a value upon such debt, and the Commissioners are hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice of any act of bankruptcy by such bankrupt committed.

Interest on Promissory Notes and Bills of Exchange proveable.

LVII. And be it enacted, That in all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved, overdue at the issuing the commission, the holder of such bill of exchange or promissory note shall be entitled to prove for interest upon the same, to be calculated by the Commissioners to the date of the commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes.

Plaintiff obtaining Judgment, &c. entitled to prove for Costs, &c.

LVIII. And be it enacted, That if any plaintiff in any action at law or suit in equity, or petition in bankruptcy or lunacy, shall have obtained any judgment decree or order against any person who shall thereafter become bankrupt for any debt or demand in respect of which such plaintiff or petitioner shall prove under the commission, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankruptcy.

Proving a Debt under a Commission to be an Election not to proceed against the Bankrupt by Action.

LIX. And be it enacted, That no creditor who has brought any action, or instituted any suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit; and in case such bankrupt shall be in prison or custody at the suit of or detained by such creditor, he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such bankrupt; and the proving or claiming a debt under a commission by any creditor, shall be deemed an election by such creditor to take the benefit of such commission, with respect to the debt so proved or claimed; provided that such creditor shall not be liable to the payment to such bankrupt, or his assignees, of the costs of such action or suit so relinquished by him; and that where any such creditor shall have brought any action or suit against

such bankrupt, jointly with any other person or persons, his relinquishing such action or suit against the bankrupt shall not affect such action or suit against such other person or persons: Provided also, that any creditor who shall have so elected to prove or claim as aforesaid, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*, if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the bail below to put in and perfect bail above within the first eight days in term after notice in the *London Gazette* of the superseding such commission, and by suing the bail upon the recognizance, if the condition thereof is broken.

Creditor having elected to come in under the Commission, if it be afterwards superseded, restored to his former Rights.

LX. And be it enacted, That whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the commission is not justly due either in whole or in part, such assignees or creditors may make representation thereof to the Commissioners; and it shall be lawful for the said Commissioners to summon before them and examine upon oath any person who shall have so proved as aforesaid, together with any person whose evidence may appear to the Commissioners to be material, either in support of or in opposition to any such debt; and if the said Commissioners, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors as aforesaid, shall be of opinion that such debt is not due either wholly or in part, the said Commissioners shall be at liberty to expunge the same, either wholly or in part, from the proceedings: Provided, that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the Commissioners shall adjudge to the creditor who has proved such debt as aforesaid, such costs to be recovered by petition: Provided also, that such assignees or creditors may apply in the first instance by petition to the Lord Chancellor, or that either party may petition against the determination of the Commissioners.

Commissioners may expunge Proof of Debts.

Persons requiring Investigation to sign Undertaking for Costs.

Application by Petition reserved.

LXI. And be it enacted, That at the second meeting appointed by the Commissioners as aforesaid, or any adjournment thereof, assignees of the bankrupt's estate and effects shall be chosen; and all creditors who have proved debts under the commission to the amount of ten pounds and upwards shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a Master in Chancery, ordinary or extraordinary, or by oath before the Commissioners *vivâ voce*, and in case of creditors residing out of *England*, by oath before a magistrate where the party shall be residing, duly attested by a notary public, *British* minister or consul; and the choice shall be made by the major part in value of the creditors so entitled to vote: Provided that the Commissioners shall have power to reject any person so chosen who shall appear to them unfit to be such assignee as aforesaid, and upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.

Choice of Assignees at Second Meeting; how chosen.

Commissioners may reject any Person chosen as unfit.

LXII. And be it enacted, That in all commissions against one or more of the partners of a firm, any creditor to whom the bankrupt or bankrupts is or are indebted, jointly with the other partner or partners of the said firm, or any of them, shall be entitled to prove his debt under such commission for the purpose only of voting in the choice of assignees under such commission, and of assenting to or dissenting from the certificate of such bankrupt or bankrupts, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts until all the separate creditors shall have received the full amount of their respective debts, unless such creditor shall be a petitioning creditor in a commission against one member of a firm.

Joint Creditor entitled to prove under separate Commission for the Purpose of voting in the Choice of Assignees; not to receive Dividend unless Petitioning Creditor against one of the Firm.

No. II. 6 Geo. IV. c. 16.

Commissioners to convey the Personal Estate to the Assignees, and Debts due to the Bankrupt.

LXIII. And be it enacted, That the Commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, all the present and future personal estate of such bankrupt, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate; and the Commissioners shall also assign as aforesaid all debts due or to be due to the bankrupt, wheresoever the same may be found or known, and such assignment shall vest the property right and interest in such debts in such assignees, as fully as if the assurance whereby they are secured had been made to such assignees; and after such assignment, neither the bankrupt nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the city of *London* or otherwise, but such assignees shall have like remedy to recover the same in their own names as the bankrupt himself might have had if he had not been adjudged bankrupt.

Commissioners to convey Bankrupt's Real Estate to Assignees.

LXIV. And be it enacted, That the Commissioners shall, by deed indented and enrolled in any of His Majesty's Courts of Record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands tenements and hereditaments, except copy or customaryhold, in *England*, *Scotland*, *Ireland*, or in any of the dominions plantations or colonies belonging to His Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands tenements or hereditaments, and of which he might, according to the laws of the several countries, dominions, plantations, or colonies, have disposed, and all such lands tenements and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate, and all deeds papers and writings respecting the same; and every such deed shall be valid against the bankrupt, and against all persons claiming under him: Provided, that where according to the laws of any such plantation or colony such deed would require registration enrolment or recording, the same shall be so registered enrolled or recorded, according to the laws of such plantation or colony; and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration enrolment or recording, without notice that the commission has issued.

Proviso as to Registration of Conveyance of Colonial Property.

Commissioners may make Sale of Hereditaments whereof the Bankrupt is seised of any Estate Tail, &c.

LXV. And be it enacted, That the Commissioners shall, by deed indented and enrolled as aforesaid, make sale for the benefit of the creditors as aforesaid of any lands tenements and hereditaments, situate either in *England* or *Ireland*, whereof the bankrupt is seised of any estate tail in possession reversion or remainder, and whereof no reversion or remainder is in the Crown, the gift or provision of the Crown, and every such deed shall be good against the said bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt, by fine, common recovery, or any other means, might cut off or debar from any remainder reversion or other interest, in or out of any of the said lands tenements and hereditaments.

Lord Chancellor may vacate any Conveyance or Assignment, and direct new.

LXVI. And be it enacted, That the Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the bankrupt, made either to assignees appointed by the Commissioners or chosen by the creditors, and any enrolment thereof, to be vacated, provided that no title of any purchaser under any conveyance prior to such order be thereby affected, and that no estate previously barred be thereby revived; and the Lord Chancellor may order the Commissioners to execute a new assignment or assignments of the debts and effects unreceived and not disposed of by the then assignee or assignees to any other person or persons to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner as the Lord Chancellor shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new

Order for new Assignment to vest the Personal Estate in the new Assignees.

assignees, and it shall be lawful for them to sue for the same, and to discharge any action or suit, or to give any acquittance for such debts, as effectually as the former assignees might have done; and the Commissioners shall, in the two *London Gazettes* next after the removal of such assignee or assignees, and such new appointment as aforesaid, cause advertisements to be inserted giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed; and if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns, provided that the order so made for vacating any bargain and sale be enrolled; and any bargain and sale to be executed in pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled.

New Conveyance of Real Estate valid, without any Conveyance from the former Assignees.

LXVII. And be it enacted, That whenever an assignee shall die, or a new assignee or assignees shall be chosen as aforesaid, no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same.

Suits not to be abated by Death or Removal of Assignees.

LXVIII. And be it enacted, That the Commissioners shall have power, by deed indented and enrolled in any of His Majesty's Courts of Record, to make sale, for the benefit of the creditors, of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto.

Commissioners may make Sale of Copyhold Lands for the Benefit of Creditors.

LXIX. And be it enacted, That every person, to whom any sale of copyhold or customary lands or tenements shall be made by the Commissioners, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden, for fines dues and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents customs and services, and shall admit him tenant of the same.

Vendees of Copyhold Lands shall compound with the Lord for their Fines.

LXX. And be it enacted, That if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done, and after such tender payment or performance, may sell and dispose of such real or personal estate for the benefit of the creditors as aforesaid.

Conditional Estates granted by the Bankrupt may be redeemed.

LXXI. And be it enacted, That if any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person, under pretence of his being an accountant of or debtor to the King, the Commissioners may examine upon oath whether the said debt was due to such debtor or accountant upon any contract originally made between such accountant and the bankrupt, and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person or persons, the Commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors under the commission, and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted,

Commissioners may proceed when the Bankrupt by Fraud makes himself Accountant to the King.

No. II. 6 Geo. IV. c. 16.

or assigned by the Commissioners, shall have and may recover the same against any person who shall detain the same.

Goods in the Possession, Order, or Disposition of the Bankrupt, may be assigned by the Commissioners.

LXXII. And be it enacted, That if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession order or disposition, any goods or chattels, whereof he was reputed owner, or whereof he had taken upon him the sale alteration or disposition as owner, the Commissioners shall have power to sell and dispose of the same for the benefit of the creditors under the commission: Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an Act of Parliament made in the fourth year of His present Majesty, intituled *An Act for the registering of Vessels.*

Proviso for Assignments of Vessels under 4 G. 4. c. 41.

Bankrupt conveying his Lands or Goods to others, or delivering Securities or transferring Debts into other Names, void.

LXXIII. And be it enacted, That if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed assigned or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the Commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt, and such children and persons as aforesaid, and against all persons claiming under him.

Distress not to be available for more than One Year's Rent due; the Landlord to prove for the Residue.

LXXIV. And be it enacted, That no distress for rent made and levied after an act of bankruptcy upon the goods or effects of any bankrupt (whether before or after the issuing of the commission), shall be available for more than one year's rent, accrued prior to the date of the commission, but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for the overplus of the rent due, and for which the distress shall not be available.

Bankrupts entitled to Leases, or Agreements for Leases, when not liable for Rent or Covenants.

LXXV. And be it enacted, That any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent non-observance or non-performance of the conditions covenants or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or such person agreeing to grant a lease, within fourteen days after he shall have had notice that the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Lord Chancellor, who may order them so to elect and to deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit.

If Assignees decline to determine whether they will accept the Lease, the Lessor may petition.

Vendor of any Estate in Lands may compel Assignees to elect whether they will abide by or decline the Agreement.

LXXVI. And be it enacted, That if any bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, shall be entitled to apply by petition to the Lord Chancellor, who may thereupon order them to deliver up the said agreement, and the possession of the premises, to the vendor or person claiming under him, or may make such other order therein as he shall think fit.

Assignees may execute Powers previously vested in Bankrupts.

LXXVII. And be it enacted, That all powers vested in any bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same.

LXXVIII. And be it enacted, That it shall be lawful for the Lord Chancellor upon the petition of the assignees, or of any purchaser from them of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all estate right or title which such bankrupt had therein, shall be as effectually barred by such order as if such conveyance had been executed by him.

Lord Chancellor may order Bankrupts to join in Conveyances.

LXXIX. And be it enacted, That if any bankrupt shall as trustee be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock funds or annuities, or any of the stock of any public company, either in *England Scotland* or *Ireland*, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents issues and profits, dividends interest or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees and all persons whose act or consent thereto is necessary, to convey assign or transfer the said estate, interest, stock, funds, or annuities to such person or persons as the Lord Chancellor shall think fit, upon the same trusts as the said estate, interest, stock, funds, or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect; and also to receive and pay over the rents issues and profits, dividends interest or produce thereof, as the Lord Chancellor shall direct.

Where Trustee becomes Bankrupt the Chancellor may order Conveyance or Assignment to other Trustees.

LXXX. And be it enacted, That if any such bankrupt shall have any government stock funds or annuities, or any of the stock of any public company, either in *England, Scotland*, or *Ireland*, standing in his name in his own right, it shall be lawful for the Commissioners, by writing under their hands, to order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

Where Bankrupt beneficially entitled to Stock.

LXXXI. And be it enacted, That all conveyances by, and all contracts and other dealings and transactions by and with any bankrupt *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed: Provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing or transaction, execution or attachment, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing the first commission.

Conveyances, Contracts, Executions, and Attachments, made or levied without Notice, &c., Two Months before the Commission, valid. Where a Commission has issued within the Two Months which is afterwards superseded, the Two Months shall be reckoned from the issuing of it.

LXXXII. And be it enacted, That all payments really and *bonâ fide* made, or which shall hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and all payments really and *bonâ fide* made, or which shall hereafter be made

Payments made by and to Bankrupt without Notice, &c. valid, notwithstanding Act of Bankruptcy.

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to any bankrupt before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and such creditor shall not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the said bankrupt had not, at the time of such payment by or to such bankrupt, notice of any act of bankruptcy by such bankrupt committed.

What shall be constructive Notice.

LXXXIII. And be it enacted, That the issuing of a commission shall be deemed notice of a prior act of bankruptcy (if an act of bankruptcy had been actually committed before the issuing the commission), if the adjudication of the person or persons against whom such commission has issued shall have been notified in the *London Gazette*, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same.

Persons not to be endangered for Delivery of Goods without Notice, &c.

LXXXIV. And be it enacted, That no person or body corporate or public company having in his or their possession or custody any money, goods, wares, merchandizes, or effects belonging to any bankrupt, shall be endangered by reason of the payment or delivery thereof to the bankrupt or his order; provided such person or company had not, at the time of such delivery or payment, notice that such bankrupt had committed an act of bankruptcy.

Bodies Politic, &c., deemed to have Notice, if Persons acting on their behalf had Notice.

LXXXV. And be it enacted, That if any accredited agent of any body corporate or public company shall have had notice of any act of bankruptcy, such body corporate or company shall be hereby deemed to have had such notice.

Bonâ fide Purchases of Bankrupts not to be impeached.

LXXXVI. And be it enacted, That no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy.

Titles to Property sold under Commission not to be impeached unless Proceedings to supersede commenced within TwelveMonths

LXXXVII. And be it enacted, That no title to any real or personal estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof.

Assignees with Consent of Creditors, may compound or submit Disputes to Arbitration, or commence Suits in Equity.

LXXXVIII. And be it enacted, That the assignees, with the consent of the major part in value of creditors who shall have proved under the commission, present at any meeting, whereof and of the purport whereof twenty-one days' notice shall have been given in the *London Gazette*, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt, or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors; and the assignees are hereby indemnified for what they shall do according to the directions aforesaid, and no suit in equity shall be commenced by the assignees without such consent as aforesaid; provided that if one-third in value or upwards of such creditors shall not attend at any such meeting (whereof such notice shall have been given as aforesaid), the assignees shall have power, with the consent of the Commissioners testified in writing under their hands, to do any of the matters aforesaid.

Meetings of Creditors to be attended by One Third in Value.

Assignees of one or more Members of a Firm may use the Names of Partners in Suits.

LXXXIX. And be it enacted, That in any commission against any one or more member or members of a firm, the Lord Chancellor may, upon petition, authorize the assignees to commence or prosecute any action at law, or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment decree or order therein as if such action or suit had been instituted with the consent of such partner or partners, and if such

partner or partners shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void; provided that every such partner if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit; and that it shall be lawful for the Lord Chancellor, upon the petition of such partner, to direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit.

Partners whose Names are so used in Suits to be indemnified, and receive Proceeds upon Petition.

XC. And be it enacted, That in any action by or against any assignee, or in any action against any Commissioner or person acting under the warrant of the Commissioners, for any thing done as such Commissioner, or under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, unless the other party in such action shall, if defendant, at or before pleading, and if plaintiff, before issue joined, give notice in writing to such assignee Commissioner or other person, that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignee Commissioner or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he thinks fit) grant a certificate of such proof or admission; and such assignee Commissioner or other person shall be entitled to the costs to be taxed by the proper officer occasioned by such notice, and such costs shall, if such assignee Commissioner or other person shall obtain a verdict, be added to the costs; and if the other party shall obtain a verdict, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee Commissioner or other person.

In Actions by or against any Person acting under the Commission, no Proof required at the Trial of Petitioning Creditor's Debt, Trading, or Act of Bankruptcy, unless Notice be given that those Matters are to be disputed.

XCI. And be it enacted, That in all suits in equity by or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall, within ten days after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice, to be taxed by the proper officer, shall, if the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon hearing of the cause.

The same in Suits in Equity.

XCII. And be it enacted, That if the bankrupt shall not (if he was within the United Kingdom at the issuing of the commission) within two calendar months after the adjudication, or (if he was out of the United Kingdom) within twelve calendar months after the adjudication, have given notice of his intention to dispute the commission, and have proceeded therein with due diligence, the depositions taken before the Commissioners at the time of or previous to the adjudication of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law, or suits in equity, brought by the assignees for any debt or demand for which the bankrupt might have sustained any action or suit.

Depositions conclusive in Actions or Suits by Assignees, for any Debt of the Bankrupt, unless he dispute the Commission, &c.

XCIII. And be it enacted, That if the assignees commence any action or suit for any money so due to the bankrupt before the time allowed as aforesaid for him to dispute the commission shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the court in which such action or suit is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed, and after the time aforesaid shall have elapsed, the assignees shall have the same paid to them out of court.

Proviso for Debtor to the Estate paying the Debt into Court when sued by the Assignee within the Time for the Bankrupt to dispute.

XCIV. And be it enacted, That all persons from whom the assignees

If the Commission afterwards superseded, Persons from whom the Assignees have recovered, or bonâ fide paying the Assignees, &c. discharged from Claims by the Bankrupt.

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shall have recovered any real or personal estate either by judgment or decree, are hereby discharged, in case the commission be afterwards superseded, from all demands which may thereafter be made in respect of the same by the person or persons against whom such commission issued, and all persons claiming under him or them; and all persons who shall without action or suit *bonâ fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them; provided such notice to try the validity of the commission had not been given, and been proceeded in within the time and in manner aforesaid.

Office for registering Proceedings in Bankruptcy.

XCV. And be it enacted, That all things done pursuant to the Act passed in the fifth year of King *George* the Second, and hereby repealed, whereby it was enacted, that the Lord Chancellor should appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the Lord Chancellor shall be at liberty from time to time, by writing under his hand, to appoint a proper person, who shall by himself or his deputy (to be approved by the said Lord Chancellor) enter of record all matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the Lord Chancellor on sufficient cause therein specified.

No Commission, Adjudication, Conveyance, or Certificate, to be received in Evidence unless entered of Record.

What Fees to be paid for Entry.

XCVI. And be it enacted, That in all commissions issued after this Act shall have taken effect, no commission of bankruptcy, adjudication of bankruptcy by the Commissioners, or assignment of the personal estate of the bankrupt, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of record as aforesaid, shall be entitled to receive for such entry of such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of two shillings each; and for the entry of every certificate of conformity, having the like certificate indorsed thereon, six shillings; and every such instrument shall be so entered of record upon the application of, or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions proceedings or other matter relating to commissions of bankruptcy to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the Lord Chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid: Provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon, purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid.

Lord Chancellor may direct certain other Matters to be entered.

Liberty to search.

Certificate of Entry indorsed to be Evidence of Entry.

Office Copies made Evidence in certain Cases.

Costs of producing original Instrument when not allowed.

XCVII. And be it enacted, That in every action suit or issue office copies of any original instrument or writing, filed in the office or officially in the possession of the Lord Chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively: and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary.

Commissions, Deeds, and other Instruments relating to Estates and Effects of Bankrupts, not liable to Stamp Duty.

XCVIII. And be it further enacted, That after this Act shall have come into effect, all commissions of bankrupt, and also all deeds, convey-

ances, assignments, surrenders, admissions and other assurances of, or to, or relating solely to any freehold, leasehold, copyhold, or customary messuages lands or tenements, or any mortgage charge or other incumbrance upon, or any estate right or interest of and in any messuages, lands, tenements, or personal estate, being the estate of or belonging to any bankrupt or bankrupts, or part or parcel thereof, and which after the execution of such deeds, conveyances, assignments, surrenders, or assurances respectively shall, either at law or in equity, be or remain the estate and property of such bankrupt or bankrupts, or the assignee or assignees appointed or chosen by virtue of the commission issued against him or them respectively, and also all powers of attorney, writs of *supersedeas* and *procedendo*, certificates of conformity, affidavits, and all other instruments and writings whatsoever relating solely to the estate or effects of any bankrupt or bankrupts, or any part thereof, or to any proceedings under any commission of bankrupt, and all advertisements inserted in the *London Gazette* relating solely to matters in bankruptcy, shall not be liable to any stamp duty, or any other government duty whatsoever, and all sales of any real or personal estate of any bankrupt or bankrupts shall not be liable to any auction duty.

Sales not liable to Auction Duty.

XCIX. And be it enacted, That any bankrupt or other person who shall, in any examination before the Commissioners, or in any affidavit or deposition authorized or directed by the present or any Act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made by or to any party, such party, if a Quaker, shall or may make solemn affirmation and such Quaker shall incur danger or penalty for refusing to make such solemn affirmation in such matters, when thereto required, as is hereby provided against persons refusing to be sworn; and all Quakers who shall, in any such affirmation knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made are respectively empowered to administer the same, and also such solemn affirmation as aforesaid.

Punishment of Perjury and false Affirmation.

Provision as to Quakers.

C. And be it enacted, That all sums of money forfeited under this Act or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees in any of His Majesty's Courts of Record; and the money so recovered (the charges of suit being deducted) shall be divided among the creditors.

Application of Forfeitures.

CI. And be it enacted, That the assignees shall keep an account wherein they shall enter all property of the bankrupt received by them, and all payments made by them on account of the bankrupt's estate, which account every creditor who shall have proved may inspect at all seasonable times; and it shall be lawful for the Commissioners at all times by writing under their hands, to summon the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents relating to the bankruptcy, in their possession; and if such assignees so summoned shall not come before the Commissioners at the time appointed (having no impediment made known to the Commissioners at the time of their meeting, and allowed by them) it shall be lawful for the said Commissioners, by warrant under their hands and seals, directed to such person as they shall think fit, to cause such assignees to be brought before them; and upon their refusing to produce such books, deeds, writings, papers, or documents as aforesaid, it shall be lawful for the said Commissioners to commit the party so refusing to such prison as they shall think fit, there to remain without bail until such party shall submit himself to the said Commissioners.

Assignees directed to keep a Book of Account of Bankrupt's Estate.

Commissioners may summon Assignees, &c.

CII. And be it enacted, That at the meeting of creditors for the choice of assignees, the major part in value of such creditors there present may direct how, and with whom and where the money received from time to time out of the estate shall be paid in and remain until it be divided; and if such creditors shall not make such direction as aforesaid, the Commis-

Creditors to direct where the Money arising from the Bankrupt's Estate shall be paid in, &c.

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sioners shall, immediately after such choice and at the same meeting make such direction; but no money shall be directed to be paid into the hands of any of the Commissioners, or of the solicitor to the commission or into any banking-house, or other house of trade in which any such Commissioner assignee or solicitor is interested.

Commissioners may direct such Money to be vested in Exchequer Bills.

CIII. And be it enacted, That the Commissioners may, as often as it shall appear to them expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of Exchequer bills for the benefit of the creditors, and may direct where and with whom such Exchequer bills shall be kept, and cause such Exchequer bills to be sold when it shall appear to them expedient and may direct the proceeds thereof, to be again laid out in the purchase of Exchequer bills, or to be applied for the benefit of the creditors, subject to the controul of the Lord Chancellor.

Assignee disobeying Direction to pay or invest Money, and retaining it, or permitting Co-assignee to retain or employ it, to be charged with 20*l.* per cent.

CIV. And be it enacted, That if any assignee shall retain in his hands or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ any sum to the amount of one hundred pounds or upwards, part of the estate of the bankrupt, or shall neglect to invest any money in the purchase of Exchequer bills, when so directed as aforesaid, every such assignee shall be liable to be charged in his accounts with such sum as shall be equal to interest at the rate of twenty *per cent.* on all such money, for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed as aforesaid, or during which he shall have so neglected to invest the same in the purchase of Exchequer bills, and the Commissioners are hereby required to charge every such assignee in his accounts accordingly.

If Assignee become Bankrupt, having Bankrupt's Estate wilfully retained, his Certificate shall not discharge his future Effects in respect of it.

CV. And be it enacted, That if any assignee indebted to the estate of which he is such assignee, in respect of money so retained or employed by him as aforesaid, become bankrupt, if he shall obtain his certificate it shall only have the effect of freeing his person from arrest and imprisonment; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself his wife and children excepted) shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt.

Commissioners shall audit the Accounts of the Assignees not sooner than Four Months from the issuing, nor later than Six Months from the last Examination.

CVI. And be it enacted, That the Commissioners shall at the meeting appointed for the last examination of the bankrupt, appoint a public meeting not sooner than four calendar months from the issuing of the commission, nor later than six calendar months from the last examination of the bankrupt, whereof and of the purport whereof they shall give twenty-one days' notice in the *London Gazette*, to audit the accounts of the assignees; and the assignees at such meeting shall deliver upon oath a true statement in writing of all money received by them respectively, and when and on what account, and how the same have been employed; and the Commissioners shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained; and it shall be lawful for the said Commissioners to examine the said assignees upon oath, touching the truth of such accounts, and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such commission, and all other just allowances.

Method of making Dividends.

CVII. And be it enacted, That the Commissioners shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof and of the purport whereof they shall give twenty-one days' notice in the *London Gazette*), to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts shall be entitled to prove the same; and the said Commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as

have proved debts under the commission, in proportion to their respective debts, and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver another part thereof to the assignees, which order shall contain an account of the time and place of making such order of the amount of the debts proved, of the money remaining in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the Commissioners to be retained by the assignees with their reasons for allowing the same to be so retained; and the assignees, in pursuance of such order (and without any deed of distribution made for that purpose), shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose, from each creditor, for the dividend received by such creditor; and such order and receipt shall be a discharge to every such assignee for so much as he shall pay pursuant to such order; and no dividend shall be declared unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid.

No Dividend without previous Audit.

CVIII. And be it enacted, That no creditor having security for his debt, or having made any attachment in *London*, or any other place, by virtue of any custom there used of the goods and chattels of the bankrupt, shall receive, upon any, such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied, by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default confession or *nil dicit* shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateable with such creditors.

Creditors having Securities for their Debts, not to receive more than other Creditors.

CIX. And be it enacted, That if the bankrupt's estate shall not have been wholly divided upon the first dividend, the Commissioners shall within eighteen calendar months after the issuing of the commission, appoint a public meeting, (whereof and of the purport whereof they shall give twenty-one days' notice in the *London Gazette,*) to make a second dividend of the bankrupt's estate, when all creditors who have not proved their debts may prove the same; and the Commissioners at such meeting, after taking such audit as herein-before directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees, in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted, divide the same in manner aforesaid.

Final Dividend within Eighteen Months; except where Suit depending, or Estate standing out, &c.

CX. And be it enacted, That if any assignee under any commission of bankrupt shall have, either in his own hands or at any bankers, or otherwise subject to his order or disposition, or to his knowledge in the hands of or in the order and disposition of himself and any co-assignee or co-assignees, or of any or either of them, any unclaimed dividend or dividends, amounting in the whole to the sum of fifty pounds, and shall not within six months after this Act shall have taken effect, or two calendar months after the expiration of one year after the declaration and order of payment of such dividend or dividends made by the Commissioners, either to pay to the creditor or creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's secretary of bankrupts, containing a full and true account of the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are repectively due, and of the amount of such dividend or dividends respectively (such account being signed by the assignee or assignees rendering the same, and attested by the solicitor to the commission, or the solicitor to the assignee or assignees signing the same), such assignee or

Assignees to file an Account in the Bankrupt Office of unclaimed Dividends remaining in their Hands.

No. II. 6 Geo. IV. c. 16.

assignees shall be charged, in account with the estate of the bankrupt, interest upon such unclaimed dividend or dividends, to be computed from the time that such certificate is hereby directed to be filed, at the rate of five pounds *per centum per annum*, for such time as he shall thenceforth retain the same, and also such further sum as the Commissioners shall think fit, not exceeding in the whole twenty pounds *per centum per annum;* and the Lord Chancellor, or the said Commissioners, may order the investment of any unclaimed dividends in the public funds, or in any government security, for, or on account of the creditors entitled, and subject to such order as the Lord Chancellor may think fit to make respecting the same, who, if he shall think fit may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the Commissioners, order the same to be divided amongst and paid to the other creditors, and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered as void to the same, but renewable as to any future dividends, to place them *pari passu* with the other creditors, but not to disturb any dividends which shall have been previously made.

Penalty on Assignees neglecting.

Power of Investment of such Dividends, and after Three Years dividing the same among the other Creditors.

No Action to be brought for Dividends, but the Remedy to be by Petition to the Lord Chancellor.

CXI. And be it enacted, That no action for any dividend shall be brought against the assignees by any creditor who shall have proved under the commission, but if the assignees shall refuse to pay any such dividend, the Lord Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application.

Bankrupt not surrendering and submitting to be examined;

or not making Discovery of his Estate and Effects;

or not delivering up his Goods, Books, &c.;

or removing or embezzling to the Value of 10*l.* guilty of Felony, &c.

CXII. And be it enacted, That if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been or shall be declared bankrupt, shall not before three of the clock upon the forty-second day after notice thereof in writing to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the *London Gazette* of the issuing of the commission, and of the meetings of the Commissioners, surrender himself to them and sign or subscribe such surrender, and submit to be examined before them, from time to time, upon oath, or being a Quaker, upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of assigned or transferred any of such estate, and all books, papers, and writings relating thereunto (except such part as shall have been really and *bonâ fide* before sold or disposed in the way of his trade, or laid out in the ordinary expence of his family); or if any such bankrupt shall not upon such examination deliver up to the Commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife and children); or if any such bankrupt shall remove, conceal or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Lord Chancellor may enlarge the Time for Bankrupt surrendering himself.

CXIII. And be it enacted, That the Lord Chancellor shall have power, as often as he shall think fit, from time to time, to enlarge the time for the bankrupt surrendering himself for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

Allowance to Bankrupt for Maintenance.

CXIV. And be it enacted, That it shall be lawful for the Commissioners, before the choice of assignees, and after such choice, for the assignees, with the approbation of the Commissioners, testified in writing under their hands, from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family.

CXV. And be it enacted, That if any bankrupt apprehended by any warrant of the Commissioners shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Bankrupt apprehended to have the same Benefit on conforming as if he had surrendered.

CXVI. And be it enacted, That the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a Master, ordinary or extraordinary, in Chancery, or Justice of the Peace, all books of account papers and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every such bankrupt, not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may, at all seasonable times before the expiration of the said forty-two days, or such further time as shall be allowed to him to finish his examination, inspect his books papers and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him; and every such bankrupt, after he shall have obtained his certificate, shall upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate and any debtor to or creditor thereof, or attend any Court of Record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid five shillings *per* day by the assignees out of his estate; and if such bankrupt shall, after such demand as aforesaid, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shown to the Commissioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the Commissioners, the said Commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended and committed to such prison as they shall think fit, there to remain until he shall conform to the satisfaction of the said Commissioners, or of the Lord Chancellor.

Bankrupt to deliver up his Books of Accounts to the Assignees upon Oath; to attend Assignees; to be at liberty to inspect Accounts.

After Allowance of Certificate to attend Assignees in settling Accounts.

Allowance for Attendance.

Commitment for Non-attendance.

CXVII. And be it enacted, That the bankrupt shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender be so arrested within the time aforesaid, he shall, on producing the summons under the hands of the Commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such summons to him, so signed as aforesaid, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any Court of Record at *Westminster*, in the name of such bankrupt, with full costs of suit.

To be free from Arrest during Examination, if not in Custody.

If arrested to be discharged on producing Summons.

Penalty on Officer detaining Bankrupt.

CXVIII. And be it enacted, That it shall be lawful for the Commissioners, at the time appointed for the last examination of the bankrupt, or any enlargement or adjournment thereof, to adjourn such examination *sine die*, and he shall be free from arrest or imprisonment for such time, not exceeding three calendar months, as they shall by indorsement upon such summons as aforesaid appoint, with like penalty upon any officer detaining such bankrupt after having been shown such summons.

Commissioners may adjourn last Examination of Bankrupt sine die.

CXIX. And be it enacted, That whenever any bankrupt is in prison or in custody, under any process, attachment, execution, commitment, or sentence, the Commissioners may, by warrant under their hands, directed to the person in whose custody such bankrupt is confined, cause such bankrupt to be brought before them at any meeting, either public or private; and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expence thereof shall be paid out of his estate,

Bankrupt in Custody to be brought before the Commissioners at the Creditors' Expence.

No. II. 6 Geo. IV. c. 16.

and such person shall be indemnified by the warrant of the Commissioners for bringing up such bankrupt: Provided that the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books papers and writings, in order to prepare an abstract of his accounts, and a statement to show the particulars of his estate and effects previous to his final examination and discovery thereof; a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination.

Assignees may appoint Persons to attend Bankrupt in Prison.

CXX. And be it enacted, That any person wilfully concealing any real or personal estate of the bankrupt, and who shall not within forty-two days after the issuing of the commission discover such estate to one or more of the Commissioners or assignees, shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person who shall, after the time allowed to the bankrupt to surrender, voluntarily discover to one or more of the Commissioners or assignees any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five *per centum* thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose, shall think fit, to be paid out of the estate recovered on such discovery.

Penalty on Persons concealing Bankrupt's Effects, 100*l.*, &c.

Allowance to Persons making Discovery thereof.

CXXI. And be it enacted, That every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity, so signed and allowed, and subject to such provisions as herein-after directed; but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt.

Bankrupt discharged by Certificate of Conformity.

By Discharge of Bankrupt Partner not discharged.

CXXII. And be it enacted, That such certificate shall be signed by four-fifths in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of twenty pounds or upwards, or after six calendar months from the last examination of the bankrupt, then either by three-fifths in number and value of such creditors, or by nine-tenths in number of such creditors, who shall thereby testify their consent to the said bankrupt's discharge as aforesaid; and no such certificate shall be such discharge, unless the Commissioners shall, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the creditors have signed in manner hereby directed, and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor.

Certificate to be signed by Four-Fifths in Number and Value of Creditors above 20*l.*

After Six Months by Three-Fifths in Number and Value, or Nine-Tenths in Number.

Allowance by Lord Chancellor.

CXXIII. And be it enacted, That in all cases where any petition for the allowance of a certificate shall have been presented to the Lord Chancellor previous to the passing of this Act, by virtue of the Act passed in the fifth year of the reign of His present Majesty, and hereby repealed, by any bankrupt whose certificate shall have been signed by the requisite number of creditors, with the exception of one whose signature is thereto necessary, and by the Commissioners, it shall be lawful for the Lord Chancellor to allow any such certificate, and such certificate shall be a valid discharge as aforesaid, provided such petition shall have been duly served as in the said Act required.

Provision for Petitions for the Allowance of Certificates presented under the 5 G. 4. c. 98.

CXXIV. And be it enacted, That the Commissioners shall not sign any certificate unless they shall have proof, by affidavit in writing, of the signature of the creditors thereto, or of any person thereto authorized by any creditor, and of the authority by which such person shall have so signed the same; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public, *British* minister,

Proof of Signature of Creditors.

No. II. 6 Geo. IV. c. 16.

or consul; and every such affidavit authority and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof.

Contracts and Securities to induce Creditors to sign, void.

CXXV. And be it enacted, That any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this Act and the special matter in evidence.

Bankrupt having obtained his Certificate, free from Arrest. Certificate Evidence of the Proceedings under the Commission. Bankrupt in Execution may be ordered to be discharged.

CXXVI. And be it enacted, That any bankrupt who shall, after his certificate shall have been allowed, be arrested, or have any action brought against him for any debt claim or demand hereby made proveable under the commission against such bankrupt, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence; and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution, or detained in prison for such debt claim or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the court wherein judgment has been so obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

Where Bankrupt has been Bankrupt before, or compounded, or taken the Benefit of the Insolvent Act, unless 15*s.* in the Pound is paid, his future Effects shall vest in the Assignees, notwithstanding Certificate.

CXXVII. And be it enacted, That if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any Insolvent Act, shall be or become bankrupt, and have obtained or shall hereafter obtain such certificate as aforesaid, unless his estate shall produce (after all charges) sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife and children) shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing the commission.

Allowance to Bankrupt. 5 per Cent. and not exceeding 400*l.* if 10*s.* paid in the Pound; 7½ and not exceeding 500*l.* if 12*s.* 6*d.*; 10 per Cent. and not exceeding 600*l.* if 15*s.*; if under 10*s.* not exceeding 3 per Cent. and 300*l.*

CXXVIII. And be it enacted, That every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five *per cent.* out of such produce, to be paid him by the assignees, provided such allowance shall not exceed four hundred pounds; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings *per cent.*, provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid ten pounds *per cent.*, provided such allowance shall not exceed six hundred pounds; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and Commissioners shall think fit, not exceeding three pounds *per cent.* and three hundred pounds.

Partner may receive Allowance though the others are not entitled.

CXXIX. And be it enacted, That in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance.

No. II. 6 Geo. IV. c. 16.

Bankrupt not entitled to Certificate or Allowance, and Certificate obtained void, if he has lost 20*l.* in One Day, or 200*l.* within Twelve Months; or 200*l.* by Stock-jobbing; or destroyed Books, &c.; or made fraudulent Entries; or concealed Property to the Value of 10*l.*; or permitted fictitious Debts to be proved.

CXXX. And be it enacted, That no bankrupt shall be entitled to his certificate, or to be paid any such allowance, and that any certificate, if obtained, shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering, in one day twenty pounds, or within one year next preceding his bankruptcy two hundred pounds; or if he shall, within one year next preceding his bankruptcy, have lost two hundred pounds by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed or in contemplation of bankruptcy, have destroyed, altered, mutilated, or falsified, or caused to be destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of ten pounds or upwards; or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

Bankrupt not liable upon any Promise to pay Debt discharged by Certificate, unless such Promise be in Writing.

CXXXI. And be it enacted, That no bankrupt, after his certificate shall have been allowed under any present or future commission, shall be liable to pay or satisfy any debt claim or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt claim or demand, upon any contract promise or agreement made or to be made after the suing out of the commission, unless such promise contract or agreement be made in writing, signed by the bankrupt, or by some person thereto lawfully authorized in writing by such bankrupt.

Assignees, in case of Surplus, shall account and pay it to the Bankrupt. In case of a Surplus all Debts to carry Interest.

CXXXII. And be it enacted, That the assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such bankrupt, his executors, administrators, or assigns; and every such bankrupt, after the creditors who have proved under the commission shall have been paid, shall be entitled to recover the remainder of the debts due to him: but the assignees shall not pay such surplus until all creditors who have proved under the commission shall have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say), all creditors whose debts are now by law entitled to carry interest, in the event of a surplus, shall first receive interest on such debts at the rate of interest reserved or by law payable thereon, to be calculated from the date of the commission, and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the date of the commission, at the rate of four pounds *per centum*.

Nine-Tenths in Number and Value of Creditors may accept a Composition which shall bind the rest.

CXXXIII. And be it enacted, That at any meeting of creditors after the bankrupt shall have passed his last examination (whereof and of the purport of which twenty-one days' notice shall have been given in the *London Gazette*), if the bankrupt or his friends shall make an offer of composition, or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the said commission.

Mode of voting in deciding upon such Composition.

CXXXIV. And be it enacted, That in deciding upon such offer as aforesaid, any creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such creditor shall be computed in value; and that any creditor to the amount of fifty pounds and upwards, residing out of *England*, shall be personally served with a

copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat; and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner hereby required for such creditors voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if thereto required) make oath before the Commissioners that there has been no such transaction between him or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

Construction of the Act.

CXXXV. And be it enacted, That this Act shall be construed beneficially for creditors, and that nothing herein contained shall alter the present practice in bankruptcy, except where any such alteration is expressly declared, and that it shall extend to aliens denizens and women, both to make them subject thereto, and to entitle them to all the benefits given thereby; and that all powers hereby given to, or duties directed to be performed by the Lord Chancellor, shall and may be exercised or performed by a Lord Keeper or Lords Commissioners of the Great Seal; and all powers given to or duties directed to be performed by the Commissioners or assignees, may be exercised and shall be performed respectively by the major part of the Commissioners, or by one assignee, where only one shall have been chosen; and that nothing herein contained shall render invalid any commission of bankruptcy now subsisting, or which shall be subsisting at the time this Act shall take effect, or any proceedings which may have been had thereunder, or affect or lessen any right, claim, demand, or remedy which any person now has thereunder, or upon or against any bankrupt against whom any commission has or shall have issued, except as herein specifically enacted; and that this Act shall not extend either to *Scotland* or *Ireland*, except where the same are expressly mentioned.

Subsisting Commissions declared valid.

Act not to extend to Scotland or Ireland.

CXXXVI. And be it enacted, That this Act shall not take effect before the first day of *September* one thousand eight hundred and twenty-five; save and except that the repeal of the Act passed in the fifth year of the reign of His present Majesty, hereby repealed, and all enactments herein contained relating to certificates of conformity, shall take effect upon the passing of this Act.

Commencement of Act.

ANALYSIS

OF

THE NEW ACT, 6 GEO. IV. c. 16. RELATING TO BANKRUPTS.

ANALYSIS.

The Parts printed in *Italics* are new.

Sect.

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2. *Description of persons liable as traders to the bankrupt laws.*
3. Acts of bankruptcy—departing the realm—*remaining abroad*—departing from dwelling house—absenting—beginning to keep house—fraudulent arrest—yielding to prison—fraudulent outlawry—arrest—attachment or *execution*—fraudulent deed executed *abroad or* at home—*fraudulent surrender of copyhold—fraudulent gift, delivery, or transfer of goods or chattels.*
4. *Conveyance of trader's property not an act of bankruptcy, unless a commission issue within six months.*
5. Acts of bankruptcy—lying in prison *for twenty-one days*—escaping out of prison.
6. Ditto—*Declaration of insolvency filed at the bankrupt office.*
7. *Concerted declaration not to invalidate commission issued thereon.*
8. Act of bankruptcy—compounding with the petitioning creditor.
9. }
10. } As to traders having privilege of
11. } Parliament.
12. Issuing commission.
13. Striking docket.
14. Petitioning creditor to prosecute commission at his costs, taxed, &c.
15. Petitioning creditor's debt—sufficient though not yet payable—even *though no security.*
16. Joint commissions against partners in a firm.
17. Proceedings in a second or other commission may be stayed.
18. *If petitioning creditor's debt is found insufficient, the Lord Chancellor may, on the petition of other creditors, order the commission to be proceeded in.*
19. *Commission valid notwithstanding act of bankruptcy prior to the petitioning creditor's debt.*
20. *Power to Lord Chancellor to issue auxiliary commissions.*
21. Commissioner's oath.
22. ——————— fees.
23. Barristers in country commissions may attend and receive fees in priority.

Sect.

24. Power of Commissioners to summon witnesses to prove trading or act of bankruptcy before adjudication.
25. Appointment of meetings for proof of debts.
26. Commission not to abate by King's or bankrupt's death, &c.
27. Power to messenger to seize, &c.
28. ——— *to seize goods in Ireland.*
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30. *Execution of search warrant in Scotland.*
31. *Of actions against persons acting under Commissioners' warrant.*
32. *Proof against petitioning creditors to render them liable.*
33. Power of Commissioners to summon witnesses.
34. Power of Commissioners to commit.
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38. Penalty on gaoler for escape.
39. Proceedings on the Habeas Corpus—*Court may look at the whole of the examination.*
40. *Ditto in actions for false imprisonment.*
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42. *Defendants to have notice.*
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44. Limitation of actions.
45. Provisional assignee.
46. Proof of debts.
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52. Proof by sureties.
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54. —— by annuity creditor.
55. *Sureties for annuities, how to prove.*
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60. *Expunging proof.*
61. Choice of assignees.
62. *Joint creditors to vote under separate commissions.*
63. Conveyance of personal estate.
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No. III. 7 & 8 Geo. IV. c. 20.

[No. III.] 7 & 8 George IV. c. 20.—An Act to regulate the Prosecution of fraudulent Bankrupts in *Scotland*.—[28th *May* 1827.]

WHEREAS it is expedient that the Court of Justiciary in *Scotland*, should have jurisdiction in cases of fraudulent bankruptcy; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful to prosecute all persons accused of fradulent bankruptcy in *Scotland*, before the High Court or any Circuit Court of Justiciary, by indictment or criminal letters, and according to the same form and course of proceeding as is used in regard to other offences prosecuted before the said courts; and the judges of the said high court and circuit courts are hereby authorized and empowered to try all cases of fraudulent bankruptcy, and to inflict such punishment on persons convicted thereof as it is now competent for the Lords of Session to award against persons convicted of the said crime.

Persons accused of fraudulent Bankruptcy may be prosecuted in Court of Justiciary.

II. Provided always, and be it enacted, That it shall and may be lawful for the trustee appointed for the management of the sequestrated estate of any bankrupt in *Scotland*, or any creditor whose claim has been received and has been duly ranked upon any such sequestrated estate in the sederunt book kept by the trustee, with the concourse of His Majesty's advocate for *Scotland*, to prosecute any such offence before the High Court or any Circuit Court of Justiciary, without prejudice always to the title of the public prosecutor to insist in all such prosecutions.

Trustees or Creditors may prosecute.

END OF VOL. IV.

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